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Vol. I

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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 328

THE UNITED STATES OF AMERICA, PETITIONER

vs.

BETHLEHEM STEEL CORPORATION, BETHLEHEM SHIPBUILDING CORPORATION, LTD., BETHLEHEM STEEL COMPANY, ET AL.

No. 329

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, PETITIONER

vs.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 22, 1940
CERTIORARI GRANTED OCTOBER 14, 1940

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VOLUME I

IN THE
DISTRICT COURT OF THE UNITED STATES
For the Eastern District of Pennsylvania

No. 11970 December Sessions, 1925.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,
Plaintiff,

against-

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,
Defendant.

STATEMENT OF CLAIM IN ASSUMPSIT

To the within defendant—

You are required to file an affidavit of defense to this statement of claim within fifteen days from the service hereof.

CHARLES SINKLER,
Attorney for Plaintiff.

CHARLES SINKLER, *Attorney for Plaintiff,*
601 Commercial Trust Building,
Philadelphia, Penn.

CRAVATH, HENDERSON & DE GERSDORFF, *of Counsel,*
52 William Street,
New York, N. Y.

DISTRICT COURT OF THE UNITED STATES

Eastern District of Pennsylvania

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

Plaintiff.

against

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

Defendant.

STATEMENT OF CLAIM

(Filed Jan. 28, 1926)

First: The plaintiff above named, Bethlehem Shipbuilding Corporation, Ltd., hereby avers that it is, and at all the times hereinafter mentioned since October 15, 1917 has been, a corporation organized and existing under and by virtue of the laws of the State of Delaware, and that the defendant is, and at all the times hereinafter mentioned since April 16, 1917 has been, a corporation organized pursuant to section 11 of the Act of Congress, approved September 7, 1916, designated by the statutory name "Shipping Act, 1916", and existing under and by virtue of the laws for the District of Columbia and more than one-half of the capital stock of which is owned by the government of the United States, and said plaintiff claims of said defendant Seven million, six hundred ninety-one thousand four hundred dollars and fourteen cents ($7,691,400.14)

with interest as hereinafter stated upon its causes of action, in which the matter in controversy exceeds, exclusive of interest and costs, the sum of Three thousand dollars ($3,000), whereof, upon information and belief, the following is a true statement to wit:

FIRST CAUSE OF ACTION.

(Contract 177 S. C.)

Second: On or shortly after the fifth day of January, 1918, the plaintiff and the defendant made and entered into a certain contract in writing, dated December 31, 1917, covering the construction by the plaintiff for the defendant at the shipyard at San Francisco, California, referred to in said contract, of twelve steel tank vessels in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 1-A, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

Third: In and by the provisions of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder the actual cost to the plaintiff of constructing such vessel plus the fixed sum for profit of Two hundred ten thousand dollars ($210,000) plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such estimated

cost to be increased or decreased, as the case might be, all as provided in said Article, by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or specifications made by the authority of the defendant. The estimated cost of each of said vessels specified in said Article XIX is Two million one hundred twenty thousand dollars ($2,120,000).

Fourth: In and by the provisions of Article XXVIII of said contract the defendant agreed that, in order to provide the plaintiff with two additional shipways, with the necessary cranes and other appliances, additional wharves, buildings, including shop and office buildings, compressor plant, tools and other equipment necessary to construct said vessels (in said contract referred to as the special improvements, tools and equipment), it would deposit with a depositary or depositaries, designated by the plaintiff and approved by the defendant, from time to time as requested by the plaintiff, up to the sum of One million dollars ($1,000,000), the amount so deposited to be used to pay the cost of said special improvements, tools and equipment, including cost of labor, cost of superintendence and other charges in connection therewith, all in the manner and as provided in said Article. On or about the 25th day of April, 1918, the plaintiff and the defendant made and entered into a contract in writing a copy of which, marked Exhibit 1-B, is hereto attached and made a part of this statement, amending said Article XXVIII of said contract to provide for the sale

posit by the defendant and use by the plaintiff as aforesaid of One million five hundred thousand dollars ($1,500,000) instead of One million dollars ($1,000,000). On or about the 17th day of July, 1918, the plaintiff and the defendant made and entered into a further contract in writing a copy of which, marked Exhibit 1-C, is hereto attached and made a part of this statement, whereby the defendant agreed to deposit an additional sum of Fifty thousand dollars ($50,000) to be expended in the manner in said Article provided, making the total amount agreed to be deposited by the defendant for use by the plaintiff to pay the cost of said special improvements, tools and equipment, One million five hundred and fifty thousand dollars ($1,550,000).

Fifth: The plaintiff completed said twelve steel tank vessels in accordance with said plans and specifications with certain changes therein authorized by the defendant in accordance with the provisions of said contract, Exhibit 1-A hereto, and delivered said vessels complete to the defendant afloat at said shipyard at San Francisco, California, on or before July 21, 1920, and the defendant thereupon took possession of and accepted said vessels. The plaintiff duly performed all the terms and conditions of all said contracts on its part to be performed and the defendant took possession of and accepted said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract, Exhibit 1-A hereto.

Sixth: While the plaintiff was engaged in the work of constructing said vessels, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction of or with the approval of the defendant, increased over the wages provided

by the schedule referred to in said Article XIX of said contract, Exhibit 1-A hereto, as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said vessels was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessels. The aggregate amount by which the labor cost of said vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of Two million five hundred eight thousand five hundred two dollars and eleven cents ($2,508,502.11).

Seventh: From time to time while the plaintiff was engaged in the work of constructing said vessels the defendant under and pursuant to the terms of said contract, Exhibit 1-A hereto, ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by which the estimated cost of said vessels specified in said Article XIX of said contract was increased by reason of said changes, as found on said audit, aggregated Sixty thousand four hundred ninety-five dollars and twenty-eight cents ($60,495.28).

Eighth: The revised estimated cost of said twelve vessels revised in accordance with the provisions of said contract, Exhibit 1-A hereto, was Twenty-eight million eight thousand nine hundred ninety-seven dollars and thirty-nine cents ($28,008,997.39), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract (12 times $2,120,000)	$25,440,000.00
Add aggregate increases in labor cost actually paid as aforesaid	2,508,502.11
Add net cost of said changes in said plans and specifications as aforesaid	60,495.28
Total revised estimated cost	$28,008,997.39

Ninth: While engaged in the work of constructing said vessels the plaintiff, at the direction and with the approval of the defendant and in accordance with the terms and provisions of said contract, Exhibit 1-A hereto, and of said contracts Exhibits 1-B and 1-C hereto, constructed and provided said special improvements, tools and equipment at a total cost to the plaintiff of more than One million five hundred fifty thousand dollars ($1,550,000).

Tenth: After the completion and delivery by the plaintiff of said vessels and the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said vessels and of the revised estimated cost thereof as provided in said Article XIX of said contract, Exhibit 1-A hereto, and of the cost of said special improvements, tools and equipment, was made by the defendant and completed on or about the first day of September, 1922.

Eleventh: The total actual cost of constructing said vessels as defined in Article XVII of said contract, Exhibit 1-A hereto, was Twenty-two million four hundred sixty-nine thousand two hundred forty-three dollars and eighty-five cents ($22,469,243.85), after crediting the salvage value of scrap,

waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

Twelfth. The aggregate amount of the various items of cost and expenditures incurred by the plaintiff in the construction and providing of said special improvements, tools and equipment was in excess of One million five hundred fifty thousand dollars ($1,550,000).

Thirteenth: Materials and supplies purchased for but not used in the construction of said vessels which under and pursuant to the provisions of Article XVIII of said contract, Exhibit 1-A hereto, became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the value of Fifty-three thousand eight hundred fifty-nine dollars and sixty-three cents ($53,859.63). By reason thereof the actual cost of said vessels, to wit, Twenty-two million four hundred sixty-nine thousand two hundred forty-three dollars and eighty-five cents ($22,469,243.85), was for the purpose of determining the amount by which the actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract is less than the revised estimated cost aforesaid, reduced by said sum of Fifty-three thousand eight hundred fifty-nine dollars and sixty-three cents ($53,859.63) or to the sum of Twenty-two million four hundred fifteen thousand three hundred eighty-four dollars and twenty-two cents ($22,415,384.22).

Fourteenth: The amount by which said actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract, Exhibit 1-A hereto, as aforesaid decreased by the value as aforesaid of said materials and supplies in paragraph Thirteenth hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of wages and the net cost of said changes in said plans and specifications is not less than Five million five hundred ninety-three thousand six hundred thirteen dollars and seventeen cents ($5,593,613.17), which amount will be increased in the event, and to the extent, that the actual cost of said vessels shall be determined to be less than the amount of the actual cost thereof alleged by the plaintiff in paragraph Eleventh hereof.

Fifteenth: Upon the construction and providing of said special improvements, tools and equipment and the completion, delivery and acceptance of said twelve vessels as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Twenty-fifth cause of action herein) the sum of Seven hundred forty-four thousand nine hundred ninety-eight dollars and thirty-six cents ($744,998.36), determined as follows:

The total actual cost of constructing said vessels as aforesaid	$22,469,243.85
The fixed sum for profit specified in said Article XIX of said contract, Exhibit 1-A hereto, (12 times $210,000)	2,520,000.00

One-half of the amount by which the total actual cost of said vessels, decreased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph Thirteenth hereof (i.e. $22,415,384.22), is less than said revised estimated cost (i.e. $28,008,997.39), such one-half of said amount being not less than		$2,796,806.58
By reason of said expenditures for said special improvements, tools and equipment, at least		1,550,000.00
Total amount which became payable from the defendant to the plaintiff under said contracts	$29,336,050.43	
Deduct aggregate of payments made under said contracts prior to the date of completion of said audit	28,591,052.07	
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff		$744,998.36

Sixteenth: No part of said sum of Seven hundred forty-four thousand nine hundred ninety-eight dollars and thirty-six cents ($744,998.36) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

SECOND CAUSE OF ACTION.

(Contract 178 S. C.)

Seventeenth: On or shortly after the fifth day of January, 1918, the plaintiff and the defendant made and entered into a certain contract in writing, dated December 31, 1917, covering the construction by the plaintiff for the defendant at the shipyard at Wilmington, Delaware, referred to in said contract, of three steel tank vessels and three cargo vessels in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 2-A, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

Eighteenth: In and by the provisions of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder the actual cost to the plaintiff of constructing such vessel plus the fixed sum for profit for such vessel specified in said Article, One hundred sixty thousand dollars ($160,000) for each such steel tank vessel and One hundred twenty-five thousand dollars ($125,000) for each such cargo vessel, plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such estimated cost to be increased or decreased, as the case might be, all as provided in said Article,

by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or specifications made by the authority of the defendant. The estimated cost specified in said Article XIX of each of said steel tank vessels is One million six hundred twelve thousand dollars ($1,612,000) and of each of said cargo vessels is One million three hundred fifty thousand dollars ($1,350,000).

Nineteenth: In and by the provisions of Article XXVIII of said contract the defendant agreed that, in order to provide the plaintiff with funds to pay for certain extensions of ways and miscellaneous tools and plant equipment necessary to carry on the work under said contract, it would deposit in its name in advance in such bank or banks as might be determined upon, in an account separate from the account in Article XV of said contract described, One hundred twenty-five thousand dollars ($125,000), said sum to be drawn upon in the manner provided in said Article XXVIII to pay the cost of said extensions and of said tools and equipment. On or about the 20th day of June, 1918, the plaintiff and the defendant made and entered into a second contract in writing supplementing said Article XXVIII a copy of which, marked Exhibit 2-B, is hereto attached and made a part of this statement, whereby the defendant agreed that, in order to provide the plaintiff with funds to pay the cost of installation and rearrangement of lights and lighting equipment and for the extension of tracks and the purchase of

an electrically driven storage-battery tractor at said shipyard, it would deposit in its name in such bank or banks as might be determined upon, an additional sum of Sixteen thousand dollars ($16,000) to be expended in the manner and subject to the terms and conditions provided in said Article XXVIII, making the total amount agreed to be deposited by the defendant for use by the plaintiff to pay the cost of said extensions, tools, equipment, and installations, One hundred forty-one thousand dollars ($141,000).

Twentieth: The plaintiff completed said three steel tank vessels and said three cargo vessels in accordance with said plans and specifications with certain changes therein authorized by the defendant in accordance with the provisions of said contract, Exhibit 2-A hereto, and delivered said vessels complete to the defendant afloat at said shipyard at Wilmington, Delaware, on or before December 31, 1920, and the defendant thereupon took possession of and accepted said vessels. The plaintiff duly performed all the terms and conditions of all said contracts on its part to be performed, and the defendant took possession of and accepted said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract, Exhibit 2-A hereto.

Twenty-first: While the plaintiff was engaged in the work of constructing said vessels, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract, Exhibit 2-A hereto, as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said

vessels was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessels. The aggregate amount by which the labor cost of said vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of One million three hundred thirty-one thousand one hundred eighty-three dollars and seventeen cents ($1,331,183.17).

Twenty-second: From time to time while the plaintiff was engaged in the work of constructing said vessels the defendant under and pursuant to the terms of said contract, Exhibit 2-A hereto, ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by which the estimated cost of said vessels specified in said Article XIX of said contract was increased by reason of said changes, as found on said audit, aggregated One hundred eighty-eight thousand nine hundred and fifty-nine dollars ($188,959).

Twenty-third: The revised estimated cost of said three steel tank vessels and said three cargo vessels, revised in accordance with the provisions of said contract, Exhibit 2-A hereto, was Ten million four hundred six thousand one hundred forty-two dollars and seventeen cents ($10,406,142.17), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract (3 times $1,612,000 plus 3 times $1,350,000)	$8,886,000.00
Add aggregate increases in labor cost actually paid as aforesaid	1,331,183.17
Add net cost of said changes in said plans and specifications as aforesaid	188,959.00
Total revised estimated cost	$10,406,142.17

Twenty-fourth: While engaged in the work of constructing said vessels the plaintiff, at the direction and with the approval of the defendant and in accordance with the terms and provisions of said contract, Exhibit 2-A hereto, and of said contract Exhibit 2-B hereto, constructed said extensions and provided said tools, equipment and installations in paragraph Nineteenth hereof mentioned at a total cost to the plaintiff of more than One hundred forty-one thousand dollars ($141,000).

Twenty-fifth: After the completion and delivery by the plaintiff of said vessels and the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said vessels and of the revised estimated cost thereof as provided in said Article XIX of said contract, Exhibit 2-A hereto, and of the cost of said extensions, tools, equipment and installations was made by the defendant and completed on or about the first day of September, 1922.

Twenty-sixth: The total actual cost of constructing said three steel tank vessels and said three cargo vessels as defined in Article XVII of said contract,

Exhibit 2-A hereto, was Nine million nine hundred ninety-three thousand three hundred seventy-five dollars and twenty-six cents ($9,993,375.26), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

Twenty-seventh: The aggregate amount of the various items of cost and expenditures incurred by the plaintiff in the construction of said extensions and in providing said tools, equipment and installations was in excess of One hundred forty-one thousand dollars ($141,000).

Twenty-eighth: Materials and supplies purchased for but not used in the construction of said vessels which under and pursuant to the provisions of Article XVIII of said contract, Exhibit 2-A hereto, became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the value of Thirty-four thousand four hundred fifty-two dollars and eighty-four cents ($34,452 84). By reason thereof the actual cost of said vessels, to wit, Nine million nine hundred ninety-three thousand three hundred seventy-five dollars and twenty-six cents ($9,993,375.26) was for the purpose of determining the amount by which the actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract is less than the revised estimated cost aforesaid, reduced by said sum of Thirty-four thousand four

hundred fifty-two dollars and eighty-four cents ($34,452.84) or to the sum of Nine million nine hundred fifty-eight thousand nine hundred twenty-two dollars and forty-two cents ($9,958,922.42).

Twenty-ninth: The amount by which said actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract, Exhibit 2-A hereto, as aforesaid decreased by the value as aforesaid of said materials and supplies in paragraph Twenty-eighth hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of wages and the net cost of said changes in said plans and specifications is not less than Four hundred forty-seven thousand two hundred nineteen dollars and seventy-five cents ($447,219.75), which amount will be increased in the event, and to the extent, that the actual cost of said vessels shall be determined to be less than the amount of the actual cost thereof alleged by the plaintiff in paragraph Twenty-sixth hereof.

Thirtieth: Upon the construction of said extensions and the providing of said tools, equipment and installations and the completion, delivery and acceptance of said three steel tank vessels and said three cargo vessels as aforesaid, and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Twenty-sixth cause of action herein) the sum of Three hundred eighty-five thousand four hundred sixty-three dollars and eighty-seven cents ($385,463.87), determined as follows:

The total actual cost of constructing said vessels as aforesaid	$ 9,993,375.26	
The fixed sum for profit specified in said Article XIX of said contract, Exhibit 2-A hereto, (3 times $160,000 plus 3 times $125,000)	855,000.00	
One-half of the amount by which the total actual cost of said vessels, decreased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph Twenty-eighth hereof (i. e. $9,958,922.42), is less than said revised estimated cost (i. e. $10,406,142.17), such one-half of said amount being not less than	223,609.87	
By reason of said expenditures for said extensions, tools, equipment and installations, at least	141,000.00	
Total amount which became payable from the defendant to the plaintiff under said contracts		$11,212,985.13
Deduct, aggregate of payments made under said contracts prior to the date of completion of said audit		10,827,521.26
Total amount (exclusive of the aforesaid damages) due from		

the defendant to the plaintiff ..... $. 385,463.87

Thirty-first: No part of said sum of Three hundred eighty-five thousand four hundred sixty-three dollars and eighty-seven cents ($385,463.87) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

THIRD CAUSE OF ACTION

(Contract 179 S. C.)

Thirty-second: On or shortly after the fifth day of January, 1918, the plaintiff and the defendant made and entered into a certain contract in writing, dated December 31, 1917, covering the construction by the plaintiff for the defendant at the shipyard at Sparrows Point, Maryland, referred to in said contract, of three steel tank vessels in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 3, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

Thirty-third: In and by the provisions of Article XIX of said contract the defendant agreed to pay

for each of the vessels to be constructed thereunder the actual cost to the plaintiff of constructing such vessel plus the fixed sum for profit of Two hundred thousand dollars ($200,000) plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such estimated cost to be increased or decreased, as the case might be, all as provided in said Article, by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or specifications made by the authority of the defendant. The estimated cost of each of said vessels specified in said Article XIX is Two million seventy thousand dollars ($2,070,000).

Thirty-fourth: The plaintiff completed said three steel tank vessels in accordance with said plans and specifications with certain changes therein authorized by the defendant in accordance with the provisions of said contract and delivered said vessels complete to the defendant afloat at said shipyard at Sparrows Point, Maryland, on or before June 14, 1919, and the defendant thereupon took possession of and accepted said vessels. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed and the defendant took possession of and accepted said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract.

Thirty-fifth: While the plaintiff was engaged in the work of constructing said vessels, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said vessels was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessels. The aggregate amount by which the labor cost of said vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of Eight hundred fifty-one thousand four hundred thirty-six dollars and thirty-eight cents ($851,436.38).

Thirty-sixth: From time to time while the plaintiff was engaged in the work of constructing said vessels the defendant under and pursuant to the terms of said contract ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by which the estimated cost of said vessels specified in said Article XIX of said contract was increased by reason of said changes, as found on said audit, aggregated Twenty-four thousand three hundred and twenty-eight dollars ($24,328).

Thirty-seventh: The revised estimated cost of said three vessels revised in accordance with the provisions of said contract was Seven million eighty-five thousand seven hundred sixty-four dollars and thirty-eight cents ($7,085,764.38), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract (3 times $2,070,000)	$6,210,000.00
Add aggregate increases in labor cost actually paid as aforesaid	851,436.38
Add net cost of said changes in said plans and specifications as aforesaid	24,328.00
Total revised estimated cost	$7,085,764.38

Thirty-eighth: After the completion and delivery by the plaintiff of said vessels and the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said vessels and of the revised estimated cost thereof as provided in said Article XIX of said contract, was made by the defendant and completed on or about the first day of September, 1922.

Thirty-ninth: The total actual cost of constructing said three vessels as defined in Article XVII of said contract was Five million five hundred fifty-six thousand three hundred thirty dollars and forty-one cents ($5,556,330.41), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

Fortieth: Materials and supplies purchased for but not used in the construction of said vessels which under and pursuant to the provisions of Article XVIII of said contract became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the value of Three thousand seven hundred eighty-five dollars and thirty-four cents ($3,785.34). By reason thereof the actual cost of said vessels, to wit, Five million five hundred fifty-six thousand three hundred thirty dollars and forty-one cents ($5,556,330.41), was for the purpose of determining the amount by which the actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract is less than the revised estimated cost aforesaid, reduced by said sum of Three thousand seven hundred eighty-five dollars and thirty-four cents ($3,785.34) or to the sum of Five million five hundred fifty-two thousand five hundred forty-five dollars and seven cents ($5,552,545.07).

Forty-first: The amount by which said actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract as aforesaid decreased by the value as aforesaid of said materials and supplies in paragraph Fortieth hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of wages and the net cost of said changes in said plans and specifications is not less than One million five hundred thirty-three thousand two hundred nineteen dollars and thirty-one cents ($1,533,219.31), which

amount will be increased in the event, and to the extent, that the actual cost of said vessels shall be determined to be less than the amount of the actual cost thereof alleged by the plaintiff in paragraph Thirty-ninth hereof.

Forty-second: Upon the completion, delivery and acceptance of said three vessels as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Twenty-seventh cause of action herein) the sum of Two hundred ten thousand five hundred thirty-one dollars and twenty-one cents ($210,531.21), determined as follows:

The total actual cost of constructing said vessels as aforesaid	$5,556,330.41
The fixed sum for profit specified in said Article XIX of said contract (3 times $200,000)	600,000.00
One-half of the amount by which the total actual cost of said vessels, decreased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph Fortieth hereof (i. e. $5,552,545.07), is less than said revised estimated cost (i. e. $7,085,764.38), such one-half of said amount being not less than	766,609.65
Total amount which became pay-	

able from the defendant to the plaintiff under said contract.	
Forwarded	$6,922,940.06
Brought Forward	$6,922,940.06
Deduct aggregate of payments made under said contract prior to the date of completion of said audit	6,712,408.85
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$ 210,531.21

Forty-third: No part of said sum of Two hundred ten thousand five hundred thirty-one dollars and twenty-one cents ($210,531.21) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

FOURTH CAUSE OF ACTION

(Contract 182 S. C.)

Forty-fourth: On or shortly after the fifth day of January, 1918, the plaintiff and the defendant made and entered into a certain contract in writing, dated December 31, 1917, covering the construction by the plaintiff for the defendant at the shipyard at Sparrows Point, Maryland, referred to in said contract, of two troop ships in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the ves-

sels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 4, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

Forty-fifth: In and by the provisions of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder, including authorized changes therein as in said contract provided, the actual cost to the plaintiff of constructing such vessel determined as in Article XVII of said contract provided, plus the sum for profit equal to ten per cent. (10%) of the amount of such cost. The defendant also agreed that upon the completion of said vessels a complete audit of the cost thereof would be made by the defendant and that thereupon the balance determined to be due to the plaintiff should become immediately due and payable.

Forty-sixth: Thereupon the plaintiff entered upon the construction of said vessels in accordance with the terms and provisions of said contract and said plans and specifications. Thereafter, and on or about the 5th day of April, 1919, the plaintiff and defendant modified said contract so as to provide thereby that said vessels should be completed as combined passenger and cargo vessels in accordance with instructions to be issued by the defendant. Thereafter the defendant issued such instructions and the plaintiff completed said two vessels as combined passenger and cargo vessels in accordance with said plans and specifications with the changes

directed by the defendant as aforesaid and with certain other changes therein authorized by the defendant in accordance with the provisions of said contract and delivered said vessels complete to the defendant afloat at said shipyard at Sparrows Point, Maryland, on or before April 30, 1921, and the defendant thereupon took possession of and accepted said vessels. The plaintiff duly performed all the terms and conditions of said contract as so modified on its part to be performed and the defendant took possession of and accepted said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract as so modified.

Forty-seventh: After the completion and delivery by the plaintiff of said vessels and the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said vessels was made by the defendant and completed on or about the first day of September, 1922.

Forty-eighth: The total actual cost of constructing said two vessels as defined in Article XVII of said contract was Eleven million three hundred fifty-four thousand two hundred fifty-eight dollars and twenty-six cents ($11,354,258.26), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

Forty-ninth: Materials and supplies purchased for but not used in the construction of said vessels which under and pursuant to the provisions of Article XVIII of said contract became and remained the property of the defendant and the value of

which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the sum for profit to be paid to the plaintiff were delivered by the plaintiff to the defendant and were of the value of One hundred fifty-two thousand five hundred ninety-eight dollars and thirty-seven cents ($152,598.37). By reason thereof the actual cost of said vessels, to wit, Eleven million three hundred fifty-four thousand two hundred fifty-eight dollars and twenty-six cents ($11,354,258.26), was for the purpose of determining the sum for profit to be allowed on the construction of said vessels reduced by said sum of One hundred fifty-two thousand five hundred ninety-eight dollars and thirty-seven cents ($152,598.37) or to the sum of Eleven million two hundred one thousand six hundred fifty-nine dollars and eighty-nine cents ($11,201,659.89).

Fiftieth: Upon the completion, delivery and acceptance of said two vessels as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Twenty-eighth cause of action herein) the sum of One hundred seventy-eight thousand nine hundred eighty-nine dollars and three cents ($178,989.03), determined as follows:

The total actual cost of constructing said vessels as aforesaid	$11,354,258.26
The sum for profit specified in said Article XIX of said contract (10% of the amount of the actual cost of said vessels de-	

creased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph Forty-ninth hereof, to wit, 10% of $11,201,659.89)	1,120,165.99
Total amount which became payable from the defendant to the plaintiff under said contract	$12,474,424.25
Deduct aggregate of payments made under said contract prior to the date of completion of said audit	12,295,435.22
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$178,989.03

Fifty-first: No part of said sum of One hundred seventy-eight thousand nine hundred eighty-nine dollars and three cents ($178,989.03) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

FIFTH CAUSE OF ACTION

(Contract 183 S. C.)

Fifty-second: On or shortly after the fifth day of January, 1918, the plaintiff and the defendant made and entered into a certain contract in writing, dated December 31, 1917, covering the construction by the plaintiff for the defendant at the shipyard at

Fore River, Massachusetts, referred to in said contract, of three steel tank vessels in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 5, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

Fifty-third: In and by the provisions of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder the actual cost to the plaintiff of constructing such vessel plus the fixed sum for profit of One hundred eighty-five thousand dollars ($185,000) plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such estimated cost to be increased or decreased, as the case might be, all as provided in said Article, by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or specifications made by the authority of the defendant. The estimated cost of each of said vessels specified in said Article XIX is One million eight hundred sixty-five thousand dollars ($1,865,000).

Fifty-fourth: The plaintiff completed said three steel tank vessels in accordance with said plans and specifications with certain changes therein authorized by the defendant in accordance with the provisions of said contract and delivered said vessels complete to the defendant afloat at said shipyard at Fore River, Massachusetts, on or before September 19, 1919, and the defendant thereupon took possession of and accepted said vessels. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed and the defendant took possession of and accepted said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract.

Fifty-fifth: While the plaintiff was engaged in the work of constructing said vessels, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said vessels was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessels. The aggregate amount by which the labor cost of said vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of Seven hundred

seventy-six thousand six hundred thirty-nine dollars and twenty cents ($776,639.20).

Fifty-sixth: From time to time while the plaintiff was engaged in the work of constructing said vessels the defendant under and pursuant to the terms of said contract ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by which the estimated cost of said vessels specified in said Article XIX of said contract was diminished by reason of said changes, as found on said audit, aggregated Twelve thousand seven hundred and ninety-one dollars ($12,791).

Fifty-seventh: The revised estimated cost of said three vessels revised in accordance with the provisions of said contract was Six million three hundred fifty-eight thousand eight hundred forty-eight dollars and twenty cents ($6,358,848.20), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract (3 times $1,865,000)	$5,595,000.00
Add aggregate increases in labor cost actually paid as aforesaid	776,639.20
Deduct net cost of said changes in said plans and specifications as aforesaid	12,791.00
Total revised estimated cost	$6,358,848.20

Fifty-eighth: After the completion and delivery by the plaintiff of said vessels and the acceptance

thereof by the defendant as aforesaid a complete audit of the total cost of said vessels and of the revised estimated cost thereof as provided in said Article XIX of said contract, was made by the defendant and completed on or about the first day of September, 1922.

Fifty-ninth: The total actual cost of constructing said three vessels as defined in Article XVII of said contract was Five million three hundred fourteen thousand four hundred forty-eight dollars and sixty-six cents ($5,314,448.66), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

Sixtieth: Materials and supplies purchased for but not used in the construction of said vessels which under and pursuant to the provisions of Article XVIII of said contract became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the value of Nineteen thousand nine hundred sixty-five dollars and forty-four cents ($19,965.44). By reason thereof the actual cost of said vessels, to wit, Five million three hundred fourteen thousand four hundred forty-eight dollars and sixty-six cents ($5,314,448.66), was for the purpose of determining the amount by which the actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract is less than the revised estimated cost aforesaid, reduced by said sum of Nineteen

thousand nine hundred sixty-five dollars and forty-four cents ($19,965.44) or to the sum of Five million two hundred ninety-four thousand four hundred eighty-three dollars and twenty-two cents ($5,294,483.22).

Sixty-first: The amount by which said actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract as aforesaid decreased by the value as aforesaid of said materials and supplies in paragraph Sixtieth hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of changes and the net cost of said changes in said plans and specifications is not less than One million sixty-four thousand three hundred sixty-four dollars and ninety-eight cents ($1,064,364.98), which amount will be increased in the event, and to the extent, that the actual cost of said vessels shall be determined to be less than the amount of the actual cost thereof alleged by the plaintiff in paragraph Fifty-ninth hereof.

Sixty-second: Upon the completion, delivery and acceptance of said three vessels as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Twenty-ninth cause of action herein) the sum of One hundred thirty-one thousand two hundred seven dollars and nine cents ($131,207.09), determined as follows:

The total actual cost of constructing said vessels as aforesaid	$5,314,448.66

The fixed sum for profit specified in said Article XIX of said contract (3 times $185,000)	555,000.00
One-half of the amount by which the total actual cost of said vessels, decreased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph Sixtieth hereof (i. e. $5,294,483.22), is less than said revised estimated cost (i. e. $6,358,848.20), such one-half of said amount being not less than	532,182.49
Total amount which became payable from the defendant to the plaintiff under said contract:	
Forwarded	$6,401,631.15
Brought Forward	$6,401,631.15
Deduct aggregate of payments made under said contract prior to the date of completion of said audit	6,270,424.06
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$131,207.09

Sixty-third: No part of said sum of One hundred thirty-one thousand two hundred seven dollars and nine cents ($131,207.09) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

SIXTH CAUSE OF ACTION

(Contract 191 S. C.)

Sixty-fourth: On or shortly after the fifth day of January, 1918, the plaintiff and the defendant made and entered into a certain contract in writing, dated December 31, 1917, covering the construction by the plaintiff for the defendant at the shipyard at San Francisco, California, referred to in said contract, of four steel cargo vessels (in said contract denominated Hull Nos. 150, 151, 153 and 170) in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 6, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

Sixty-fifth: In and by the provisions of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder the actual cost to the plaintiff of constructing such vessel plus the fixed sum for profit for such vessel specified in said contract, Two hundred twelve thousand four hundred dollars ($212,400) each for said vessels, Hull Nos. 150 and 153, Two hundred ten thousand six hundred dollars ($210,600) for said vessel, Hull No. 151, and Two Hundred sixteen thousand dollars ($216,000) for said vessel, Hull No. 170, plus one-half of the sum by which such actual cost should be less than an estimated cost

specified in said Article, such estimated cost to be increased or decreased, as the case might be, all as provided in said Article, by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of or with the approval of the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or specifications made by the authority of the defendant. The estimated costs of said vessels specified in said Article XIX are: Two million one hundred twenty-four thousand dollars ($2,124,000) for each of said vessels, Hull Nos. 150 and 153, Two million one hundred six thousand dollars ($2,106,000) for said vessel, Hull No. 151, and Two million one hundred sixty thousand dollars ($2,160,000) for said vessel, Hull No. 170.

Sixty-sixth: The plaintiff completed said four steel cargo vessels in accordance with said plans and specifications with certain changes therein authorized by the defendant in accordance with the provisions of said contract and delivered said vessels complete to the defendant afloat at said shipyard at San Francisco, California, on or before May 8, 1919, and the defendant thereupon took possession of and accepted said vessels. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed and the defendant took possession of and accepted said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract.

Sixty-seventh: While the plaintiff was engaged in the work of constructing said vessels, the rate of wages actually paid by the plaintiff in the construc-

tion thereof was, by the direction of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said vessels was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessels. The aggregate amount by which the labor cost of said vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of Six hundred twenty-one thousand nine hundred forty-seven dollars and seventeen cents ($621,947.17).

Sixty-eighth: From time to time while the plaintiff was engaged in the work of constructing said vessels the defendant under and pursuant to the terms of said contract ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by which the estimated cost of said vessels specified in said Article XIX of said contract was increased by reason of said changes, as found on said audit, aggregated One hundred three thousand seven hundred sixty dollars and fifty-two cents ($103,760.52).

Sixty-ninth: The revised estimated cost of said four vessels revised in accordance with the provisions of said contract was Nine million two hundred thirty-nine thousand seven hundred seven dollars

and sixty-nine cents ($9,239,707.69), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract	$8,514,000.00
Add aggregate increases in labor cost actually paid as aforesaid	621,947.17
Add net cost of said changes in said plans and specifications as aforesaid	103,760.52
Total revised estimated cost	$9,239,707.69

Seventieth: After the completion and delivery by the plaintiff of said vessels and the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said vessels and of the revised estimated cost thereof as provided in said Article XIX of said contract, was made by the defendant and completed on or about the first day of September, 1922.

Seventy-first: The total actual cost of constructing said four vessels as defined in Article XVII of said contract was Six million three hundred fifty-four thousand one hundred sixty-three dollars and fifty-three cents ($6,354,163.53), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

Seventy-second: Materials and supplies purchased for but not used in the construction of said vessels which under and pursuant to the provisions

of Article XVIII of said contract became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the value of Three thousand eight hundred sixty-nine dollars and thirty-seven cents ($3,869.37). By reason thereof the actual cost of said vessels, to wit, Six million three hundred fifty-four thousand one hundred sixty-three dollars and fifty-three cents ($6,354,163.53), was for the purpose of determining the amount by which the actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract is less than the revised estimated cost aforesaid, reduced by said sum of Three thousand eight hundred sixty-nine dollars and thirty-seven cents ($3,869.37) or to the sum of Six million three hundred fifty thousand two hundred ninety-four dollars and sixteen cents ($6,350,294.16).

Seventy-third: The amount by which said actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract as aforesaid decreased by the value as aforesaid of said materials and supplies in paragraph Seventy-second hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of wages and the net cost of said changes in said plans and specifications is not less than Two million eight hundred eighty-nine thousand four hundred thirteen dollars and fifty-three cents ($2,889,413.53), which amount will be increased in the event, and to the extent, that the actual cost of said vessels shall be determined to be less than the

amount of the actual cost thereof alleged by the plaintiff in paragraph Seventy-first hereof.

Seventy-fourth: Upon the completion, delivery and acceptance of said four vessels as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Thirtieth cause of action herein) the sum of Three hundred seventy-eight thousand two hundred sixty-nine dollars and eighteen cents ($378,269.18), determined as follows:

The total actual cost of constructing said vessels as aforesaid	$6,354,163.53
The fixed sum for profit specified in said Article XIX of said contract	851,400.00
One-half of the amount by which the total actual cost of said vessels, decreased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph Seventy-second hereof (i. e. $6,350,294.16), is less than said revised estimated cost (i. e. $9,239,707.69), such one-half of said amount being not less than	1,444,706.76
Total amount which became payable from the defendant to the plaintiff under said contract	$8,650,270.29
Deduct aggregate of payments made under said contract prior	

to the date of completion of said audit	8,272,001.11
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$378,269.18

Seventy-fifth: No part of said sum of Three hundred seventy-eight thousand two hundred sixty-nine dollars and eighteen cents ($378,269.18) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

SEVENTH CAUSE OF ACTION

(Contract 196 S. C.)

Seventy-sixth: On or shortly after the fifth day of January, 1918, the plaintiff and the defendant made and entered into a certain contract in writing, dated December 31, 1917, covering the construction by the plaintiff for the defendant at the shipyard at Sparrows Point, Maryland, referred to in said contract, of one steel cargo vessel in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessel as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 7, is hereto attached and made a part of this statement

and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

Seventy-seventh: In and by the provisions of Article XIX of said contract the defendant agreed to pay for the vessel to be constructed thereunder the actual cost to the plaintiff of constructing said vessel plus the fixed sum for profit of One hundred twenty-nine thousand five hundred dollars ($129,500), plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such estimated cost to be increased or decreased, as the case might be, all as provided in said Article, by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or specifications made by the authority of the defendant. The estimated cost of said vessel specified in said Article XIX is One million two hundred ninety-five thousand dollars ($1,295,000).

Seventy-eighth: The plaintiff completed said steel cargo vessel in accordance with said plans and specifications with certain changes therein authorized by the defendant in accordance with the provisions of said contract and delivered said vessel complete to the defendant afloat at said shipyard at Sparrows Point, Maryland, on or before September 27, 1918, and the defendant thereupon took possession of and accepted said vessel. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed and the defendant took possession of and accepted said vessel as

constructed in accordance with said plans and specifications and the terms and conditions of said contract.

Seventy-ninth: While the plaintiff was engaged in the work of constructing said vessel, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said vessel was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessel. The aggregate amount by which the labor cost of said vessel actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of One hundred thirty-two thousand three hundred eighteen dollars and seventy-three cents ($132,318.73).

Eightieth: From time to time while the plaintiff was engaged in the work of constructing said vessel the defendant under and pursuant to the terms of said contract ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by which the estimated cost of said vessel specified in said Article XIX of said contract was increased by reason of said

changes, as found on said audit, aggregated Five thousand nine hundred forty dollars and eleven cents ($5,940.11).

Eighty-first: The revised estimated cost of said vessel revised in accordance with the provisions of said contract was One million four hundred thirty-three thousand two hundred fifty-eight dollars and eighty-four cents ($1,433,258.84), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract	$1,295,000.00
Add aggregate increases in labor cost actually paid as aforesaid	132,318.73
Add net cost of said changes in said plans and specifications as aforesaid	5,940.11
Total revised estimated cost	$1,433,258.84

Eighty-second: After the completion and delivery by the plaintiff of said vessel and the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said vessel and of the revised estimated cost thereof as provided in said Article XIX of said contract, was made by the defendant and completed on or about the first day of September, 1922.

Eighty-third: The total actual cost of constructing said vessel as defined in Article XVII of said contract was One million one hundred twenty-three thousand seven hundred eighty-two dollars and eight cents ($1,123,782.08), after crediting the salvage value of scrap, waste containers, etc., originally

purchased for said vessel and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

Eighty-fourth: The amount by which said actual cost of said vessel determined in accordance with the provisions of Article XVII of said contract as aforesaid is less than the estimated cost of said vessel revised as aforesaid for increases of wages and the net cost of said changes in said plans and specifications is not less than Three nundred nine thousand four hundred seventy-six dollars and seventy-six cents ($309,476.76), which amount will be increased in the event, and to the extent, that the actual cost of said vessel shall be determined to be less than the amount of the actual cost thereof alleged by the plaintiff in paragraph Eighty-third hereof.

Eighty-fifth: Upon the completion, delivery and acceptance of said vessel as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Thirty-first cause of action herein) the sum of Thirty-seven thousand one hundred forty dollars and forty-six cents ($37,140.46), determined as follows:

The total actual cost of constructing said vessel as aforesaid	$1,123,782.08
The fixed sum for profit specified in said Article XIX of said contract	129,500.00
One-half of the amount by which the total actual cost of said vessel (i e. $1,123,782.08) is less than said revised estimated cost	

(i. e. $1,433,258.84), such one-half of said amount being not less than	$ 154,738.38
Total amount which became payable from the defendant to the plaintiff under said contract	$1,408,020.46
Deduct aggregate of payments made under said contract prior to the date of completion of said audit	1,370,880.00
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$37,140.46

Eighty-sixth: No part of said sum of Thirty-seven thousand one hundred forty dollars and forty-six cents ($37,140.46) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

EIGHTH CAUSE OF ACTION

(Contract 226 S. C.)

Eighty-seventh: On or about the eighteenth day of March, 1918, the plaintiff and the defendant made and entered into a certain contract in writing, covering the construction by the plaintiff for the defendant at the shipyard at Sparrows Point, Maryland, referred to in said contract, of four steel tank vessels and three cargo vessels in accordance with the terms and provisions of said contract and the

plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 8, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

Eighty-eighth: In and by the provisions of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder the actual cost to the plaintiff of constructing such vessel plus the fixed sum for profit for such vessel specified in said Article, Two hundred thousand dollars ($200,000) for each such tank vessel and One hundred twenty-five thousand dollars ($125,000) for each such cargo vessel; plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such estimated cost to be increased or decreased, as the case might be, all as provided in said Article, by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or specifications made by the authority of the defendant. The estimated cost specified in said Article XIX of each of said steel tank vessels is Two million dollars ($2,000,000), and of each of said cargo vessels is One million two hundred ninety-five thousand dollars ($1,295,000).

Eighty-ninth: The plaintiff completed said four steel tank vessels and said three cargo vessels in accordance with said plans and specifications with certain changes therein authorized by the defendant in accordance with the provisions of said contract and delivered said vessels complete to the defendant afloat at said shipyard at Sparrows Point, Maryland, on or before November 20, 1919, and the defendant thereupon took possession of and accepted said vessels. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed and the defendant took possession of and accepted said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract.

Ninetieth: While the plaintiff was engaged in the work of constructing said vessels, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said vessels was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessels. The aggregate amount by which the labor cost of said vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of One million nine hundred

sixty-nine thousand one hundred forty-eight dollars and eighty-five cents ($1,969,148.85).

Ninety-first: From time to time while the plaintiff was engaged in the work of constructing said vessels the defendant under and pursuant to the terms of said contract ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by which the estimated cost of said vessels specified in said Article XIX of said contract was increased by reason of said changes, as found on said audit, aggregated One hundred twenty-four thousand four hundred and two dollars ($124,402).

Ninety-second: The revised estimated cost of said four steel tank vessels and said three cargo vessels revised in accordance with the provisions of said contract was Thirteen million nine hundred seventy-eight thousand five hundred fifty dollars and eighty-five cents ($13,978,550.85), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract (4 times $2,000,000 plus 3 times $1,295,000)	$11,885,000.00
Add aggregate increases in labor cost actually paid as aforesaid	1,969,148.85
Add net cost of said changes in said plans and specifications as aforesaid	124,402.00
Total revised estimated cost	$13,978,550.85

Ninety-third: After the completion and delivery by the plaintiff of said vessels and the acceptance

thereof by the defendant as aforesaid a complete audit of the total cost of said vessels and of the revised estimated cost thereof as provided in said Article XIX of said contract, was made by the defendant and completed on or about the first day of September, 1922.

Ninety-fourth: The total actual cost of constructing said four steel tank vessels and said three cargo vessels as defined in Article XVII of said contract was Ten million nine hundred four thousand five hundred forty-seven dollars and eighty-two cents ($10,904,547.82), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

Ninety-fifth: Materials and supplies purchased for but not used in the construction of said vessels which under and pursuant to the provisions of Article XVIII of said contract became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the value of Thirteen thousand one hundred eighteen dollars and seventy seven cents ($13,118.77). By reason of the delivery thereof to the defendant as aforesaid the actual cost of said vessels, to wit, Ten million nine hundred four thousand five hundred forty-seven dollars and eighty-two cents ($10,904,547.82), was for the purpose of determining the amount by which the actual cost of said vessels determined in accordance with

the provisions of Article XVII of said contract is less than the revised estimated cost aforesaid, reduced by said sum of Thirteen thousand one hundred eighteen dollars and seventy-seven cents ($13,118.77) or to the sum of Ten million eight hundred ninety-one thousand four hundred twenty-nine dollars and five cents ($10,891,429.05).

Ninety-sixth: The amount by which said actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract as aforesaid decreased by the value as aforesaid of said materials and supplies in paragraph Ninety-fifth hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of wages and the net cost of said changes in said plans and specifications is not less than Three million eighty-seven thousand one hundred twenty-one dollars and eighty cents ($3,087,121.80), which amount will be increased in the event, and to the extent, that the actual cost of said vessels shall be determined to be less than the amount of the actual cost thereof alleged by the plaintiff in paragraph Ninety-fourth hereof.

Ninety-seventh: Upon the completion, delivery and acceptance of said four steel tank vessels and said three cargo vessels as aforesaid, and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Thirty-second cause of action herein) the sum of Five hundred seventy-eight thousand seven hundred two dollars and thirty-five cents ($578,702.35), determined as follows:

The total actual cost of constructing said vessels as aforesaid.	$10,904,547.82	
The fixed sum for profit specified in said Article XIX of said contract (4 times $200,000 plus 3 times $125,000)	1,175,000.00	
One-half of the amount by which the total actual cost of said vessels, decreased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph Ninety-fifth hereof (i. e. $10,891,429.05), is less than said revised estimated cost (i. e. $13,978,550.85), such one-half of said amount being not less than	1,543,560.90	
Total amount which became payable from the defendant to the plaintiff under said contract	$13,623,108.72	
Deduct aggregate of payments made under said contract prior to the date of completion of said audit	13,044,406.37	
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$578,702.35	

Ninety-eighth: No part of said sum of Five hundred seventy-eight thousand seven hundred two dollars and thirty-five cents ($578,702.35) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff

with interest thereon from the first day of September, 1922.

NINTH CAUSE OF ACTION.

(Contract 230 S. C.)

Ninety-ninth: On or about the twenty-second day of April, 1918, the plaintiff and the defendant made and entered into a certain contract in writing covering the construction by the plaintiff for the defendant at the shipyard at San Francisco, California, referred to in said contract, of two steel cargo vessels in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 9, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

One Hundredth: In and by the provisions of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder the actual cost to the plaintiff of constructing such vessel plus the fixed sum for profit of Two hundred seven thousand five hundred dollars ($207,500) plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such estimated cost to be increased or decreased, as the case might be, all as

provided in said Article, by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or specifications made by the authority of the defendant. The estimated cost of each of said vessels specified in said Article XIX is Two million seventy-five thousand dollars ($2,075,000).

One Hundred First: The plaintiff completed said two steel cargo vessels in accordance with said plans and specifications with certain changes therein authorized by the defendant in accordance with the provisions of said contract and delivered said vessels complete to the defendant afloat at said shipyard at San Francisco, California, on or before June 30, 1919, and the defendant thereupon took possession of and accepted said vessels. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed and the defendant took possession of and accepted said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract.

One Hundred Second: While the plaintiff was engaged in the work of constructing said vessels, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said vessels was increased over the labor cost that would have been

incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessels. The aggregate amount by which the labor cost of said vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of Three hundred thirty-six thousand two hundred twenty-one dollars and ninety cents ($336,221.90).

One Hundred Third: From time to time while the plaintiff was engaged in the work of constructing said vessels the defendant under and pursuant to the terms of said contract ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by which the estimated cost of said vessels specified in said Article XIX of said contract was increased by reason of said changes, as found on said audit, aggregated Seventeen thousand six hundred four dollars and twenty cents ($17,604.20).

One Hundred Fourth: The revised estimated cost of said two vessels revised in accordance with the provisions of said contract was Four million five hundred three thousand eight hundred twenty-six dollars and ten cents ($4,503,826.10), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract (2 times $2,075,000)	$4,150,000.00

Add aggregate increases in labor cost actually paid as aforesaid	336,221.90
Add net cost of said changes in said plans and specifications as aforesaid	17,604.20
Total revised estimated cost	$4,503,826.10

One Hundred Fifth: After the completion and delivery by the plaintiff of said vessels and the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said vessels and of the revised estimated cost thereof as provided in said Article XIX of said contract, was made by the defendant and completed on or about the first day of September, 1922.

One Hundred Sixth: The total actual cost of constructing said two vessels as defined in Article XVII of said contract was Three million two hundred nineteen thousand six hundred seventeen dollars and thirty cents ($3,219,617.30), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

One Hundred Seventh: Materials and supplies purchased for but not used in the construction of said vessels which under and pursuant to the provisions of Article XVIII of said contract became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the

value of Twenty-six thousand four hundred thirty-three dollars and eighty-two cents ($26,433.82). By reason thereof the actual cost of said vessels, to wit, Three million two hundred nineteen thousand six hundred seventeen dollars and thirty cents ($3,219,617.30), was for the purpose of determining the amount by which the actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract is less than the revised estimated cost aforesaid, reduced by said sum of Twenty-six thousand four hundred thirty-three dollars and eighty-two cents ($26,433.82) or to the sum of Three million one hundred ninety-three thousand one hundred eighty-three dollars and forty-eight cents ($3,193,183.48).

One Hundred Eighth: The amount by which said actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract as aforesaid decreased by the value as aforesaid of said materials and supplies in paragraph One Hundred Seventh hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of wages and the net cost of said changes in said plans and specifications is not less than One million three hundred ten thousand six hundred forty-two dollars and sixty-two cents ($1,310,642.62), which amount will be increased in the event, and to the extent, that the actual cost of said vessels shall be determined to be less than the amount of the actual cost thereof alleged by the plaintiff in paragraph One Hundred Sixth hereof.

One Hundred Ninth: Upon the completion, delivery and acceptance of said two vessels as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of

the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Thirty-third cause of action herein) the sum of Two hundred twelve thousand seven hundred eleven dollars and thirteen cents ($212,711.13), determined as follows:

The total actual cost of constructing said vessels as aforesaid		$3,219,617.30
The fixed sum for profit specified in said Article XIX of said contract (2 times $207,500)		415,000.00
One-half of the amount by which the total actual cost of said vessels, decreased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph One Hundred Seventh hereof (i. e. $3,193,183.48), is less than said revised estimated cost (i. e. $4,503,826.10), such one-half of said amount being not less than		655,321.31
Total amount which became payable from the defendant to the plaintiff under said contract	$4,289,938.61	
Deduct aggregate of payments made under said contract prior to the date of completion of said audit	4,077,227.48	
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff		$212,711.13

One Hundred Tenth: No part of said sum of Two hundred twelve thousand seven hundred eleven dollars and thirteen cents ($212,711.13) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

TENTH CAUSE OF ACTION.

(Contract 299 S. C.)

One Hundred Eleventh: On or about the thirtieth day of April, 1918, the plaintiff and the defendant made and entered into a certain contract in writing covering the construction by the plaintiff for the defendant at the shipyard at Fore River, Massachusetts, referred to in said contract, of three steel tank vessels in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications) marked Exhibit 10, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

One Hundred Twelfth: In and by the provisions of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder the actual cost to the plaintiff of constructing such vessel plus the fixed sum for profit of One

hundred eighty-five thousand dollars ($185,000) plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such estimated cost to be increased or decreased, as the case might be, all as provided in said Article, by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or specifications made by the authority of the defendant. The estimated cost of each of said vessels specified in said Article XIX is One million eight hundred fifty thousand dollars ($1,850,000).

One Hundred Thirteenth: The plaintiff completed said three steel tank vessels in accordance with said plans and specifications with certain changes therein authorized by the defendant in accordance with the provisions of said contract and delivered said vessels complete to the defendant afloat at said shipyard at Fore River, Massachusetts, on or before December 22, 1919, and the defendant thereupon took possession of and accepted said vessels. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed and the defendant took possession of and accepted said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract.

One Hundred Fourteenth: While the plaintiff was engaged in the work of constructing said vessels, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction

of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said vessels was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessels. The aggregate amount by which the labor cost of said vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of Six hundred thirty-five thousand three hundred forty-nine dollars and thirty-six cents ($635,349.36).

One Hundred Fifteenth: From time to time while the plaintiff was engaged in the work of constructing said vessels the defendant under and pursuant to the terms of said contract ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by which the estimated cost of said vessels specified in said Article XIX of said contract was diminished by reason of said changes, as found on said audit, aggregated Ten thousand five hundred and eighty-one dollars ($10,581).

One Hundred Sixteenth: The revised estimated cost of said three vessels revised in accordance with the provisions of said contract was Six million one hundred seventy-four thousand seven hundred six-

ty-eight dollars and thirty-six cents ($6,174,768.36), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract (3 times $1,850,000)	$5,550,000.00
Add aggregate increases in labor cost actually paid as aforesaid	635,349.36
Deduct net cost of said changes in said plans and specifications as aforesaid	10,581.00
Total revised estimated cost	$6,174,768.36

One Hundred Seventeenth: After the completion and delivery by the plaintiff of said vessels and the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said vessels and of the revised estimated cost thereof as provided in said Article XIX of said contract was made by the defendant and completed on or about the first day of September, 1922.

One Hundred Eighteenth: The total actual cost of constructing said three vessels as defined in Article XVII of said contract was Four million eight hundred seventy-three thousand nine hundred fifty-seven dollars and forty-six cents ($4,873,957.46), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

One Hundred Nineteenth: Materials and supplies purchased for but not used in the construction of said vessels which under and pursuant to the pro-

visions of Article XVIII of said contract became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the value of Eighteen thousand five hundred sixteen dollars and twenty-two cents ($18,516.22). By reason thereof the actual cost of said vessels, to wit, Four million eight hundred seventy-three thousand nine hundred fifty-seven dollars and forty-six cents ($4,873,957.46), was for the purpose of determining the amount by which the actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract is less than the revised estimated cost aforesaid, reduced by said sum of Eighteen thousand five hundred sixteen dollars and twenty-two cents ($18,516.22) or to the sum of Four million eight hundred fifty-five thousand four hundred forty-one dollars and twenty-four cents ($4,855,441.24).

One Hundred Twentieth: The amount by which said actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract as aforesaid decreased by the value as aforesaid of said materials and supplies in paragraph One Hundred Nineteenth hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of wages and the net cost of said changes in said plans and specifications is not less than One million three hundred nineteen thousand three hundred twenty-seven dollars and twelve cents ($1,319,327.12), which amount will be increased, in the event, and to the extent, that the

actual cost of said vessels shall be determined to be less than the amount of the actual cost thereof alleged by the plaintiff in paragraph One Hundred Eighteenth hereof.

One Hundred Twenty-first: Upon the completion, delivery and acceptance of said three vessels as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Thirty-fourth cause of action herein) the sum of Two hundred twelve thousand six hundred sixty-eight dollars and six cents ($212,668.06), determined as follows:

The total actual cost of constructing said vessels as aforesaid	$4,873,957.46
The fixed sum for profit specified in said Article XIX of said contract (3 times $185,000)	555,000.00
One-half of the amount by which the total actual cost of said vessels, decreased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph One Hundred Nineteenth hereof (i. e. $4,855,441.24), is less than said revised estimated cost (i. e. $6,174,768.36), such one-half of said amount being not less than	659,663.56
Total amount which became payable from the defendant to the plaintiff under said contract	$6,088,621.02

Deduct aggregate of payments made under said contract prior to the date of completion of said audit	5,875,952.96
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$212,668.06

One Hundred Twenty-second: No part of said sum of Two hundred twelve thousand six hundred sixty-eight dollars and six cents ($212,668.06) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

ELEVENTH CAUSE OF ACTION

(Contract 300 S. C.)

One Hundred Twenty-third: On or about the thirtieth day of April, 1918, the plaintiff and the defendant made and entered into a certain contract in writing covering the construction by the plaintiff for the defendant at the shipyard at Sparrows Point, Maryland, referred to in said contract, of three steel tank vessels in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 11, is hereto at-

tached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

One Hundred Twenty-fourth: In and by the provisions of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder the actual cost to the plaintiff of constructing such vessel plus the fixed sum for profit of Two hundred thousand dollars ($200,000) plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such estimated cost to be increased or decreased, as the case might be, all as provided in said Article, by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or specifications made by the authority of the defendant. The estimated cost of each of said vessels specified in said Article XIX is Two million dollars ($2,000,000).

One Hundred Twenty-fifth. The plaintiff completed said three steel tank vessels in accordance with said plans and specifications with certain changes therein authorized by the defendant in accordance with the provisions of said contract and delivered said vessels complete to the defendant afloat at said shipyard at Sparrows Point, Maryland, on or before July 20, 1920, and the defendant thereupon took possession of and accepted said vessels. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed

and the defendant took possession of and accepted said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract.

One Hundred Twenty-sixth: While the plaintiff was engaged in the work of constructing said vessels, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said vessels was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessels. The aggregate amount by which the labor cost of said vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth the sum of Eight hundred ninety-nine thousand nine hundred eleven dollars and sixty-seven cents ($899,911.67).

One Hundred Twenty-seventh: From time to time while the plaintiff was engaged in the work of constructing said vessels the defendant under and pursuant to the terms of said contract ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by

which the estimated cost of said vessels specified in said Article XIX of said contract was increased by reason of said changes, as found on said audit, aggregated Forty-one thousand and thirty-nine dollars ($41,039).

One Hundred Twenty-eighth: The revised estimated cost of said three vessels revised in accordance with the provisions of said contract was Six million nine hundred forty thousand nine hundred fifty dollars and sixty-seven cents ($6,940,950.67), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract (3 times $2,000,000)	$6,000,000.00
Add aggregate increases in labor cost actually paid as aforesaid	899,911.67
Add net cost of said changes in said plans and specifications as aforesaid	41,039.00
Total revised estimated cost	$6,940,950.67

One Hundred Twenty-ninth: After the completion and delivery by the plaintiff of said vessels and the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said vessels and of the revised estimated cost thereof as provided in said Article XIX of said contract was made by the defendant and completed on or about the first day of September, 1922.

One Hundred Thirtieth: The total actual cost of constructing said three vessels as defined in Article XVII of said contract was Five million one hundred twenty-five thousand fifty-three dollars and twenty-

three cents ($5,125,053.23), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

One Hundred Thirty-first: Materials and supplies purchased for but not used in the construction of said vessels which under and pursuant to the provisions of Article XVIII of said contract became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the value of Two thousand four hundred sixty-five dollars and thirty six cents ($2,465.36). By reason thereof the actual cost of said vessels, to wit, Five million one hundred twenty-five thousand fifty-three dollars and twenty-three cents ($5,125,053.23), was for the purpose of determining the amount by which the actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract is less than the revised estimated cost aforesaid, reduced by said sum of Two thousand four hundred sixty-five dollars and thirty-six cents ($2,465.36) or to the sum of Five million one hundred twenty-two thousand five hundred eighty-seven dollars and eighty-seven cents ($5,122,587.87).

One Hundred thirty-second: The amount by which said actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract as aforesaid decreased by the value as aforesaid of said materials and supplies in para-

graph One Hundred Thirty-first hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of wages and the net cost of said changes in said plans and specifications is not less than One million eight hundred eighteen thousand three hundred sixty-two dollars and eighty cents ($1,818,362.80), which amount will be increased in the event, and to the extent, that the actual cost of said vessels shall be determined to be less than the amount of the actual cost thereof alleged by the plaintiff in paragraph One Hundred Thirtieth hereof.

One Hundred Thirty-third: Upon the completion, delivery and acceptance of said three vessels as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Thirty-fifth cause of action herein) the sum of Two hundred sixty thousand three hundred ninety-four dollars and eight cents ($260,394.08), determined as follows:

The total actual cost of constructing said vessels as aforesaid		$5,125,053.23
The fixed sum for profit specified in said Article XIX of said contract (3 times $200,000)		600,000.00
One-half of the amount by which the total actual cost of said vessels, decreased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph One		

Hundred Thirty-first hereof (i. e. $5,122,587.87), is less than said revised estimated cost (i. e. $6,940,950.67), such one-half of said amount being not less than	909,181.40
Total amount which became payable from the defendant to the plaintiff under said contract	$6,634,234.63
Deduct aggregate of payments made under said contract prior to the date of completion of said audit	6,373,840.55
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$260,394.08

One Hundred Thirty-fourth: No part of said sum of Two hundred sixty thousand three hundred ninety-four dollars and eight cents ($260,394.08) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

TWELFTH CAUSE OF ACTION

(Contract 301 S. C.)

One Hundred Thirty-fifth: On or about the thirtieth day of April, 1918, the plaintiff and the defendant made and entered into a certain contract in writing covering the construction by the plaintiff for the defendant at the shipyard at San Francisco, California, referred to in said contract, of six steel

tank vessels and six cargo vessels (denominated by the defendant Hull Nos. 1676-1687, inclusive, and hereafter in this cause of action sometimes referred to by said numbers) in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 12, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

One Hundred Thirty-sixth: In and by the provision of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder the actual cost to the plaintiff of constructing such vessel plus the fixed sum for profit for such vessel specified in said Article, Two hundred ten thousand dollars ($210,000) for each such tank vessel and Two hundred seven thousand five hundred dollars ($207,500) for each such cargo vessel, plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such estimated cost to be increased or decreased as the case might be, all as provided in said Article, by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or speci-

fications made by the authority of the defendant. The estimated cost specified in said Article XIX of each of said steel tank vessels is Two million one hundred thousand dollars ($2,100,000), and of each of said cargo vessels is Two million seventy-five thousand dollars ($2,075,000).

One Hundred Thirty-seventh: Thereafter and on or about February 11, 1919, the defendant directed the plaintiff to suspend work on three of said steel tank vessels, Hull Nos. 1679, 1680, and 1681, and three of said cargo vessels, Hull Nos. 1685, 1686, and 1687. On or about August 19, 1919, the defendant directed the plaintiff to cancel said contract as to said three cargo vessels, and on or about November 4, 1919, notified the plaintiff to resume work on said three steel tank vessels.

One Hundred Thirty-eighth: The plaintiff completed said six steel tank vessels and said three cargo vessels, Hull Nos. 1682-1684, in accordance with said plans and specifications with certain changes therein authorized by the defendant in accordance with the provisions of said contract and delivered said vessels complete to the defendant afloat at said shipyard at San Francisco, California, on or before July 22, 1921, and the defendant thereupon took possession of and accepted said vessels. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed and the defendant took possession of and accepted said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract.

One Hundred Thirty-ninth: While the plaintiff was engaged in the work of constructing said six

steel tank vessels and said three cargo vessels, Hull Nos. 1682-1684, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said vessels was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessels. The aggregate amount by which the labor cost of said vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of One million five hundred thirty-one thousand nine hundred sixty-seven dollars and sixty-two cents ($1,531,967.62).

One Hundred Fortieth: From time to time while the plaintiff was engaged in the work of constructing said six steel tank vessels and said three cargo vessels, Hull Nos. 1682-1684, the defendant under and pursuant to the terms of said contract ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by which the estimated cost of said vessels specified in said Article XIX of said contract was increased by reason of said changes, as found on said audit, aggregated Forty-six thousand five hundred thirty-two dollars and three cents ($46,532.03).

One Hundred Forty-first: The revised estimated cost of said six steel tank vessels and said three cargo vessels, Hull Nos. 1682-1684, revised in accordance with the provisions of said contract was Twenty million four hundred three thousand four hundred ninety-nine dollars and sixty-five cents ($20,403,499.65), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract (6 times $2,100,000 plus 3 times $2,075,000)	$18,825,000.00
Add aggregate increases in labor cost actually paid as aforesaid	1,531,967.62
Add net cost of said changes in said plans and specifications as aforesaid	46,532.03
Total revised estimated cost	$20,403,499.65

One Hundred Forty-second: After the completion and delivery by the plaintiff of said six steel tank vessels and said three cargo vessels, Hull Nos. 1682-1684, and the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said six steel tank vessels and said three cargo vessels, Hull Nos. 1682-1684, and of the revised estimated cost thereof as provided in said Article XIX of said contract, was made by the defendant and completed on or about the first day of September, 1922.

One Hundred Forty-third: The total actual cost of constructing said six steel tank vessels and said three cargo vessels, Hull Nos. 1682-1684, as defined in Article XVII of said contract was Fifteen million three hundred forty-six thousand eight hundred seventy-one dollars and seventy-three cents ($15,346,

871.73), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

One Hundred Forty-fourth: In the partial construction of said three canceled cargo vessels, Hull Nos. 1685-1687, the plaintiff incurred actual costs prior to the cancelation thereof in the amount of Six hundred ninety-nine thousand seven hundred forty-six dollars and forty-six cents ($699,746.46).

One Hundred Forty-fifth: Materials and supplies purchased for but not used in the construction of said six steel tank vessels and said three cargo vessels, Hull Nos. 1682-1684, which under and pursuant to the provisions of Article XVIII of said contract became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the value of Seventy thousand three hundred sixty-three dollars and thirty-nine cents ($70,363.39). By reason thereof the actual cost of said six steel tank vessels, and said three cargo vessels, Hull Nos. 1682-1684, to wit, Fifteen million three hundred forty-six thousand eight hundred seventy-one dollars and seventy-three cents ($15,346,871.73), was for the purpose of determining the amount by which the actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract is less than the revised estimated cost aforesaid, reduced by said sum of Seventy thousand three hundred sixty-three dollars and thirty-nine

cents ($70,363.39) or to the sum of Fifteen million two hundred seventy-six thousand five hundred eight dollars and thirty-four cents ($15,276,508.34).

One Hundred Forty-sixth: The amount by which said actual cost of said six steel tank vessels and said three cargo vessels, Hull Nos. 1682-1684, determined in accordance with the provisions of Article XVII of said contract as aforesaid decreased by the value as aforesaid of said materials and supplies in paragraph One Hundred Forty-fifth hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of wages and the net cost of said changes in said plans and specifications is not less than Five million one hundred twenty-six thousand nine hundred ninety-one dollars and thirty-one cents ($5,126,991.31), which amount will be increased in the event, and to the extent, that the actual cost of said vessels shall be determined to be less than the amount of the actual cost thereof alleged by the plaintiff in paragraph One Hundred Forty-third hereof.

One Hundred Forty-seventh: Upon the completion, delivery and acceptance of said vessels as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Thirty-sixth cause of action herein) the sum of Nine hundred twenty-two thousand one hundred forty dollars and fifty-six cents ($922,140.56), determined as follows:

The total actual cost of constructing said completed vessels as aforesaid	$15,346,871.73

The fixed sum for profit specified in said Article XIX of said contract (6 times $210,000 plus 3 times $207,500)	1,882,500.00
One-half of the amount by which the total actual cost of said completed vessels, decreased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph ~~One~~ Hundred Forty-fifth hereof (i. e., $15,276,508.34), is less than said revised estimated cost (i. e., $20,403,499.65), such one-half of said amount being not less than	2,563,495.65
The actual cost incurred in the partial construction of said canceled vessels	699,746.46
Fee for profit on account of the partial construction of said canceled vessels	69,974.65
Total amount which became payable from the defendant to the plaintiff under said contract	$20,562,588.49
Deduct aggregate of payments made under said contract prior to the date of completion of said audit	19,640,447.93
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$922,140.56

One Hundred Forty-eighth: No part of said sum of Nine hundred twenty-two thousand one hundred forty dollars and fifty-six cents ($922,140.56), has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

THIRTEENTH CAUSE OF ACTION

(Contract 313 S. C.)

One Hundred Forty-ninth: On or about the 15th day of May, 1918, the plaintiff and the defendant made and entered into a certain contract in writing covering the construction by the plaintiff for the defendant at the shipyard at Elizabethport, New Jersey, referred to in said contract, of ten tug boats in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 13, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

One Hundred Fiftieth: In and by the provisions of said contract the defendant agreed to pay to the plaintiff in respect of each of said vessels at least the actual cost to the plaintiff of the work on said vessel determined as in said contract provided and

in addition thereto, as compensation for services to be rendered by the plaintiff in the performance of said work, a sum for profit which should be not less than ten per cent. (10%) of the cost of said work, said sum for profit not to exceed in the case of each said vessel, however, Thirty thousand dollars ($30,000).

One Hundred Fifty-first: Thereupon the plaintiff entered upon the construction of said vessels in accordance with the terms and provisions of said contract and said plans and specifications and the plaintiff duly performed all the terms and conditions of said contract on its part to be performed up to the time of the termination of the work thereunder as hereinafter in paragraph One Hundred Fifty-second hereof alleged.

One Hundred Fifty-second: On or about the 25th day of April, 1919, the defendant notified the plaintiff in writing that said contract was thereby canceled and instructed the plaintiff that all work thereunder should be terminated and thereupon without prejudice the plaintiff terminated all work under said contract and complied with the instructions of the defendant in that connection.

One Hundred Fifty-third: After the termination of the work under said contract as aforesaid, a complete audit of the cost of the work on said vessels, including the cost of all materials on hand for such work at the time of such termination, was made by the defendant and completed on or about the first day of September, 1922.

One Hundred Fifty-fourth: The total actual cost of constructing said ten vessels at the time of the

termination of the work thereon as defined in Article XVII of said contract was at least Four hundred eighty-eight thousand one hundred-ninety-two dollars and twenty-five cents ($488,192.25), which cost did not amount to more than Fifty thousand dollars ($50,000) in respect of any one vessel.

One Hundred Fifty-fifth: Upon the termination of the work under said contract as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Thirty-seventh cause of action herein) at least the sum of Eighty-four thousand forty-four dollars and twenty-nine cents ($84,044.29), determined as follows:

The total actual cost of the work on said vessels prior to the termination thereof as aforesaid	$488,192.25
Portion of fixed fees payable under said contract up to time of said termination (i. e. 10% of $488,192.25)	48,819.22
Total amount which became payable from the defendant to the plaintiff under said contract	$537,011.47
Deduct aggregate of payments made under said contract prior to the date of completion of said audit	452,967.18
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$84,044.29

One hundred Fifty-sixth: No part of said sum of Eighty-four thousand forty-four dollars and twenty-nine cents ($84,044.29) has been paid, although duly demanded, and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

FOURTEENTH CAUSE OF ACTION.

(Contract 314 S. C.)

One hundred fifty-seventh: On or about the fifteenth day of May, 1918, the plaintiff and the defendant made and entered into a certain contract in writing covering the construction by the plaintiff for the defendant at the shipyard at Wilmington, Delaware, referred to in said contract, of three steel tank vessels and seven cargo vessels in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 14, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

One hundred fifty-eighth: In and by the provisions of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder the actual cost to the plaintiff

of constructing such vessels plus the fixed sum for profit for such vessel specified in said Article, One hundred fifty-six thousand dollars ($156,000) for each such steel tank vessel and Ninety-eight thousand dollars ($98,000) for each such cargo vessel, plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such estimated cost to be increased or decreased, as the case might be, all as provided in said Article, by the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, and also increased or decreased, as the case might be, by the net cost of any changes in said plans or specifications made by the authority of the defendant. The estimated cost specified in said Article XIX of each of said steel tank vessels is One million five hundred sixty thousand dollars ($1,560,000), and of each of said cargo vessels is Nine hundred eighty thousand dollars ($980,000).

One hundred fifty-ninth: Thereafter, and on or about the 27th day of June, 1919, at the request of the plaintiff the defendant approved the transfer of the building of two of said cargo vessels (Owner's Hull Nos. 1980-81) from said shipyard mentioned in said contract to the Moore plant of the plaintiff at Elizabethport, New Jersey, and thereupon the plaintiff transferred the building of said two cargo vessels to said Moore plant.

One hundred sixtieth: The plaintiff completed said three steel tank vessels and said seven cargo vessels in accordance with said plans and specifica-

tions with certain changes therein authorized by the defendant in accordance with the provisions of said contract and delivered said three steel tank vessels and five of said cargo vessels complete to the defendant afloat at said shipyard at Wilmington, Delaware, on or before October 22, 1920, and said remaining two cargo vessels complete to the defendant afloat at said shipyard at Elizabethport, New Jersey, on or before June 29, 1920, and the defendant thereupon took possession of and accepted all said vessels. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed and the defendant took possession of and accepted all said vessels as constructed in accordance with said plans and specifications and the terms and conditions of said contract.

One hundred sixty-first: While the plaintiff was engaged in the work of constructing said vessels, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said vessels was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said vessels. The aggregate amount by which the labor cost of said vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of Two

million five hundred eleven thousand two hundred one dollars and sixty-one cents ($2,511,201.61).

One hundred sixty-second: From time to time while the plaintiff was engaged in the work of constructing said vessels the defendant under and pursuant to the terms of said contract ordered and directed that certain changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. The net amount by which the estimated cost of said vessels specified in said Article XIX of said contract was increased by reason of said changes, as found on said audit, aggregated Three hundred thirty-three thousand one hundred dollars and fifty cents ($333,100.50).

One hundred sixty-third: The revised estimated cost of said vessels revised in accordance with the provisions of said contract was Fourteen million three hundred eighty-four thousand three hundred two dollars and eleven cents ($14,384,302.11), made up as follows:

The estimated cost thereof specified in said Article XIX of said contract (3 times $1,560,000 plus 7 times $980,000)	$11,540,000.00
Add aggregate increases in labor cost actually paid as aforesaid	2,511,201.61
Add net cost of said changes in said plans and specifications as aforesaid	333,100.50
Total revised estimated cost	$14,384,302.11

One hundred sixty-fourth: After the completion and delivery by the plaintiff of said vessels and

the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said vessels and of the revised estimated cost thereof as provided in said Article XIX of said contract, was made by the defendant and completed on or about the first day of September, 1922.

One hundred sixty-fifth: The total actual cost of constructing said vessels as defined in Article XVII of said contract was Thirteen million seventy-three thousand eight hundred forty-five dollars and forty-six cents ($13,073,845.46), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto.

One hundred sixty-sixth: Materials and supplies purchased for but not used in the construction of said vessels which under and pursuant to the provisions of Article XVIII of said contract became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the value of Forty-eight thousand one hundred thirty dollars and seventy-nine cents ($48,130.79). By reason thereof the actual cost of said vessels to wit, Thirteen million seventy-three thousand eight hundred forty-five dollars and forty-six cents ($13,073,845.46), was for the purpose of determining the amount by which the actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract is less than the re-

vised estimated cost aforesaid, reduced by said sum of Forty-eight thousand one hundred thirty dollars and seventy-nine cents ($48,130.79) or to the sum of Thirteen million twenty-five thousand seven hundred fourteen dollars and sixty-seven cents ($13,025,714.67).

One hundred sixty-seventh: The amount by which said actual cost of said vessels determined in accordance with the provisions of Article XVII of said contract as aforesaid decreased by the value as aforesaid of said materials and supplies in paragraph One hundred sixty-sixth hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of wages and the net cost of said changes in said plans and specifications as aforesaid is not less than One million three hundred fifty-eight thousand five hundred eighty-seven dollars and forty-four cents ($1,358,587.44), which amount will be increased in the event, and to the extent, that the actual cost of said vessels shall be determined to be less than the amount of the actual cost thereof alleged by the plaintiff in paragraph One hundred sixty-fifth hereof.

One hundred sixty-eighth: Upon the completion, delivery and acceptance of said vessels as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Thirty-eighth cause of action herein) the sum of Five hundred fifty-nine thousand six hundred fifty-nine dollars and sixty-two cents ($559,659.62), determined as follows:

The total actual cost of constructing said vessels as aforesaid	$13,073,845.46
The fixed sum for profit specified in said Article XIX of said contract (3 times $156,000 plus 7 times $98,000)	1,154,000.00
One-half of the amount by which the total actual cost of said vessels, decreased by the amount of the value of said materials and supplies delivered to the defendant, as alleged in paragraph One Hundred Sixty-sixth hereof (i. e. $13,025,714.67), is less than said revised estimated cost (i. e. $14,384,302.11), such one-half of said amount being not less than	679,293.72
Total amount which became payable from the defendant to the plaintiff under said contract	$14,907,139.18
Deduct aggregate of payments made under said contract prior to the date of completion of said audit	14,347,479.56
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$559,659.62

One hundred sixty-ninth: No part of said sum of Five hundred fifty-nine thousand six hundred fifty-nine dollars and sixty-two cents ($559,659.62) has been paid, although duly demanded, and said

sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

FIFTEENTH CAUSE OF ACTION

(Contract 340 S. C.)

One hundred seventieth: On or about the 21st day of June, 1918, the plaintiff and the defendant made and entered into a certain contract in writing covering (a) the erection and equipping of a shipbuilding plant for the defendant upon property then owned, or thereafter to be acquired, by the defendant at Alameda, near the City of San Francisco, California, and as a part thereof and for use in connection therewith an office building upon property to be leased by the plaintiff at Bethlehem, Pennsylvania, in accordance with the terms and provisions of said contract and the plans and specifications for said shipbuilding plant therein referred to, subject, however, to such modifications of said plans and specifications as the defendant might direct, and (b), after said shipyard should be ready, the construction by the plaintiff for the defendant at said shipyard of twenty (20) steel steam vessels suitable for and equipped to transport troops, in accordance with the terms and provisions of said contract and the plans and specifications for said vessels therein referred to, subject, however, to such changes in said last-mentioned plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without either set of said plans and specifications), marked Ex-

hibit 15, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

One hundred seventy-first: In and by the provisions of Article XXIV of said contract, the defendant agreed that in case it should for any reason cancel said contract and terminate the work thereunder, it would pay to the plaintiff, in addition to the cost of construction of said shipbuilding plant and of the work on the vessels to be constructed under said contract, including the cost of all materials then on hand for such construction and work, five per cent. (5%) of that part of such cost as applies to the construction of said shipbuilding plant and seven and one-half per cent. (7½%) of that part which applies to the construction of said vessels which should then be uncompleted. The defendant also agreed that upon the completion of said vessels or upon the cancellation of said contract a complete audit of the cost of construction of said shipbuilding plant and the work on the vessels to be constructed under said contract would be made by the defendant and that thereupon the amount determined to be due to the plaintiff thereunder should become immediately due and payable.

One hundred seventy-second: Thereupon the plaintiff entered upon the erection and equipping of said shipbuilding plant and the construction of said vessels in accordance with the terms and provisions of said contract and said plans and specifications, and the plaintiff duly performed all the terms and conditions of said contract on its part to be performed up to the time of the termination of the work

thereunder as hereinafter in paragraph One hundred seventy-third hereof alleged.

One hundred seventy-third: On or about the 15th day of October, 1918, the defendant cancelled said contract and terminated all work thereunder.

One hundred seventy-fourth: After the cancellation of said contract and the termination of the work thereunder, a complete audit of the cost of construction of said shipbuilding plant and of the partial construction of said vessels, including the cost of all materials on hand for such construction and work at the time of said cancellation, was made by the defendant and completed on or before the first day of September, 1922.

One hundred seventy-fifth: The cost of construction of said shipbuilding plant, including the cost of all materials on hand for such construction at the time of said cancellation, was at least the sum of Five million one hundred sixty thousand nine hundred seventy-one dollars and fifty-nine cents ($5,160,971.59) and the cost of the work on said vessels including the cost of all materials then on hand for such work, was at least the sum of Three hundred seventy-five thousand dollars ($375,000).

One hundred seventy-sixth: Upon the cancellation of said contract as aforesaid and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Thirty-ninth cause of action herein) at least the sum of Two hundred seventy-six thousand one hundred

seventy-three dollars and fifty-eight cents ($276,173.58), made up as follows:

5% of $5,160,971,59	$258,048.58
7½% of $375,000	28,125.00
Deduct salvage value of the interest of the Fleet Corporation in the office building constructed by the plaintiff under said contract	10,000.00
Total amount (exclusive of the aforesaid damages) which became due from the defendant to the plaintiff	$276,173.58

One hundred seventy-seventh: No part of said sum of Two hundred seventy-six thousand one hundred seventy-three dollars and fifty-eight cents ($276,173.58) has been paid, although duly demanded; and said sum is now due and owing from the defendant to the plaintiff with interest thereon from the first day of September, 1922.

SIXTEENTH CAUSE OF ACTION

(Contract 465 S. C.)

One hundred seventy-eighth: Under date of the fifteenth day of July, 1918, the plaintiff and the defendant made and entered into a certain contract in writing covering the construction by the plaintiff for the defendant at the shipyard at Sparrows Point, Maryland, referred to in said contract, of six troop ships (denominated by the defendant Hull Nos. 2505-2510, and hereafter in this cause of action sometimes referred to by said numbers) in accordance with the terms and provisions of said contract

and the plans and specifications therein referred to, subject, however, to such changes in said plans and specifications not materially affecting the general design of the vessels as should thereafter in accordance with the terms of said contract be authorized by the defendant. A copy of said contract (without said plans and specifications), marked Exhibit 16, is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

One hundred seventy-ninth: In and by the provisions of Article XIX of said contract the defendant agreed to pay for each of the vessels to be constructed thereunder the actual cost to the plaintiff of constructing such vessel plus the fixed sum for profit of Three hundred twenty thousand dollars ($320,000) plus one-half of the sum by which such actual cost should be less than an estimated cost specified in said Article, such fixed sum for profit to be increased on account of increases in cost due to changes in said plans and specifications in the proportion that said fixed sum for profit specified in said Article bears to the estimated cost specified in said Article, and such estimated cost to be increased or decreased, as the case might be, by (a) the amount of any increases or decreases of wages which should actually be paid by the plaintiff at the direction of, or with the approval of, the defendant above or below the schedule of wages referred to in said contract, (b) the net cost of any changes in said plans or specifications made by the authority of the defendant, (c) any adjustment in accordance with said contract resulting from the fact that the price of materials should be above or below the prices specified in Exhibit A to said contract, and (d) in-

creases or decreases in the freight rates which might be made during the life of said contract; subject to the condition, however, that the amount that should be paid to the plaintiff in respect of any of said vessels on account of any sum by which such actual cost of said vessel should be less than such estimated cost thereof, revised as aforesaid, should not exceed Two hundred thousand dollars ($200,000). In and by the provisions of said contract the defendant also agreed that the amount that it would pay to the plaintiff in respect of any of said vessels should not be less than the actual cost to the plaintiff of the work on said vessel determined as in said contract provided, plus, as compensation for services to be rendered by the plaintiff in the performance of said work, a sum for profit which should be not less than seven and six thousand nine hundred twenty-three ten thousandths per cent. (7.6923%) of the cost of said work, said sum for profit not to exceed in the case of each such vessel, however, Three hundred and twenty thousand dollars ($320,000), or such amount to which said sum for profit for each such vessel should be increased in accordance with said contract. The estimated cost of each of said vessels specified in said Article XIX is Four million one hundred sixty thousand dollars ($4,160,000).

One hundred eightieth: Thereupon the plaintiff entered upon the construction of said vessels in accordance with the terms and provisions of said contract and said plans and specifications. Thereafter, and on or about the 5th day of April, 1919, the plaintiff and the defendant modified said contract so as to provide thereby that said vessels should be completed as combined passenger and cargo vessels in accordance with definite instructions to be is-

sued by the defendant. Thereafter the defendant issued such instructions and the plaintiff in pursuance thereof completed said vessels (with the exception of the vessels work on which was terminated as hereinafter in paragraph One hundred eighty-first hereof set forth) as combined passenger and cargo vessels.

One hundred eighty-first: On or about the 24th day of August, 1920, the plaintiff received from the defendant instructions to suspend all work on three of said vessels, Hull Nos. 2508-2510, and on or about the 29th day of November, 1920, the defendant notified the plaintiff in writing that it had on the 25th day of October, 1920, cancelled so much of said contract as related to the construction of said three vessels. Following the receipt of said instructions directing the suspension of work on said three vessels the plaintiff without prejudice suspended work thereon and thereafter without prejudice complied with all instructions of the defendant in that connection.

One hundred eighty-second: The plaintiff completed said remaining three vessels, Hull Nos. 2505-2507, in accordance with said plans and specifications with said changes agreed upon as in paragraph One hundred eightieth hereof mentioned and with other changes therein from time to time authorized by the defendant in accordance with the provisions of said contract, and delivered said three vessels complete to the defendant afloat at said shipyard at Sparrows Point, Maryland, on or before May 9, 1922, and the defendant thereupon took possession of and accepted said three vessels. The plaintiff duly performed all the terms and conditions of said contract on its

part to be performed and the defendant took possession of and accepted said three vessels, Hull Nos. 2505-2507, as constructed in accordance with said plans and specifications as modified as above and as hereinafter stated and the terms and conditions of said contract.

One hundred eighty-third: While the plaintiff was engaged in the work of constructing said three vessels, Hull Nos. 2505-2507, the rate of wages actually paid by the plaintiff in the construction thereof was, by the direction of or with the approval of the defendant, increased over the wages provided by the schedule referred to in said Article XIX of said contract as aforesaid and by reason thereof the labor cost actually incurred by the plaintiff in the construction of said three vessels was increased over the labor cost that would have been incurred by the plaintiff had said schedule remained in force during the whole period of the construction of said three vessels. The aggregate amount by which the labor cost of said three vessels actually incurred by the plaintiff was increased over the labor cost that would have been incurred if said schedule had remained in force during the period of the construction thereof was, as found on the audit made by the defendant as hereinafter set forth, the sum of One million five hundred nine thousand one hundred seventy-eight dollars and eighty-six cents ($1,509,178.86).

One hundred eighty-fourth: In addition to the changes in said plans and specifications in paragraph One Hundred eightieth hereof mentioned, the defendant, from time to time, while the plaintiff was engaged in the work of constructing said three vessels,

Hull Nos. 2505-2507, under and pursuant to the terms of said contract, ordered and directed that certain other changes in said plans and specifications be made and said changes were made in accordance with the orders and directions of the defendant given as aforesaid. By reason of all said changes in said plans and specifications made up to March 1, 1921, the estimated cost of each of said three vessels specified in Article XIX of said contract was increased in accordance with said Article by at least the sum of One million four hundred forty thousand dollars ($1,440,000), and the fixed sum for profit for each of said three vessels specified in said Article was in accordance with said Article increased by at least the sum of One hundred ten thousand seven hundred sixty-nine dollars and twelve cents ($110,769.12). The net amount by which the estimated cost of said three vessels, Hull Nos. 2505-2507, was increased in accordance with said Article by said changes in said plans and specifications made after March 1, 1921, was One million one hundred eighty-three thousand seven hundred and seventy-three dollars ($1,183,773). The net amount by which said fixed sum for profit for each of said three vessels was increased in accordance with said Article by said changes in said plans and specifications made after March 1, 1921, was Thirty thousand three hundred fifty-three dollars and twelve cents ($30,353.12). The net amount by which the estimated cost of said three vessels was increased by reason of all said changes in said plans and specifications in this paragraph mentioned, as found on said audit, aggregated at least Five million five hundred three thousand seven hundred and seventy-three dollars ($5,503,773). The net amount by which said fixed sum for profit for each of said three vessels was increased in accord-

ance with said Article by reason of all said changes in said plans and specifications aggregated at least the sum of One hundred forty-one thousand one hundred twenty-two dollars and twenty-four cents ($141,122.24).

One Hundred Eighty-Fifth: From time to time during the period of the construction of said three vessels, Hull Nos. 2505-2507, the prices of materials used in the construction of said three vessels were less than the prices specified in Exhibit A to said contract, while freight rates were from time to time increased over the freight rates in force at the time said contract was made. The net amount by which the estimated cost of said three vessels was in accordance with said contract decreased by reason of said decreases in said prices of materials and said increases in said freight rates was, as found on said audit, One hundred eighty-seven thousand nine hundred eighty dollars and sixty-eight cents ($187,980.68).

One Hundred Eighty-sixth: The revised estimated cost of said three vessels, Hull Nos. 2505-2507, revised in accordance with the provisions of said contract was Nineteen million three hundred four thousand nine hundred seventy-one dollars and eighteen cents ($19,304,971.18) made up as follows:

The estimated cost thereof specified in said Article XIX of said contract (3 times $4,160,000)	$12,480,000.00
Add on account of net cost of said changes in said plans and specifications made prior to March 1, 1921	4,320,000.00
Add on account of net cost of said	

changes in said plans and specifications made after March 1, 1921	1,183,773.00
Add aggregate increases in labor cost, actually paid as aforesaid	1,509,178.86
Deduct adjustments in estimated cost by reason of changes in material prices and freight rates as aforesaid	187,980.68
Total revised estimated cost of said three vessels	$19,304,971.18

One Hundred Eighty-seventh: After the completion and delivery by the plaintiff of said three vessels, Hull Nos. 2505-2507, and the acceptance thereof by the defendant as aforesaid a complete audit of the total cost of said three vessels and of the revised estimated cost thereof as provided in said Article XIX of said contract, and of the total cost of the work on said three vessels, Hull Nos. 2508-2510, was made by the defendant and completed on or about the first day of September, 1922.

One Hundred Eighty-eighth: The total actual cost of constructing said three vessels, Hull Nos. 2505-2507, as defined in Article XVII of said contract was Fifteen million two hundred thirty-three thousand five hundred thirteen dollars and seventy-four cents ($15,233,513.74), after crediting the salvage value of scrap, waste containers, etc., originally purchased for said three vessels and disposed of during the life of said contract and all other items by said contract required to be credited thereto. The total actual cost of the work on said three vessels, Hull Nos. 2508-2510, up to the time of the termina-

tion thereof as aforesaid, as defined in said Article XVII, was Three million thirty-three thousand eight hundred eighty-six dollars and ninety-six cents ($3,033,886.96).

One Hundred Eighty-ninth: Materials and supplies purchased for but not used in the construction of said three vessels, Hull Nos. 2505-2507, which under and pursuant to the provisions of Article XVIII of said contract became and remained the property of the defendant and the value of which is, under said Article, to be credited on the cost of said three vessels for the purpose of determining the difference between the actual cost and the revised estimated cost thereof, were delivered by the plaintiff to the defendant and were of the value of One hundred fifty-two thousand five hundred ninety-eight dollars and thirty-six cents ($152,598.36). By reason thereof the actual cost of said three vessels, to wit, Fifteen million two hundred thirty-three thousand five hundred thirteen dollars and seventy-four cents ($15,233,513.74), was for the purpose of determining the amount by which the actual cost of said three vessels determined in accordance with the provisions of Article XVII of said contract is less than the revised estimated cost aforesaid, reduced by said sum of One hundred fifty-two thousand five hundred ninety-eight dollars and thirty-six cents ($152,598.36) or to the sum of Fifteen million eighty thousand nine hundred fifteen dollars and thirty-eight cents ($15,080,915.38).

One Hundred-Ninetieth: The amount by which said actual cost of said three vessels, Hull Nos. 2505-2507, determined in accordance with the provisions of Article XVII of said contract as aforesaid decreased by the value as aforesaid of said materials

and supplies in paragraph One Hundred Eighty-ninth hereof set forth, is less than the estimated cost of said vessels revised as aforesaid for increases of wages, the net cost of said changes in said plans and specifications as aforesaid and said changes in material prices and freight rates, is not less than Four million two hundred twenty-four thousand fifty-five dollars and eighty cents ($4,224,055.80), one-half of which amount is greater than the sum of Six hundred thousand dollars ($600,000), the maximum amount of savings payable in respect of said three vessels in accordance with the terms and provisions of said contract.

One Hundred Ninety-first: Upon the termination of the work on said three vessels, Hull Nos. 2508-2510, and the completion, delivery and acceptance of said three vessels, Hull Nos. 2505-2507, as aforesaid, and the completion of said audit, there became due from the defendant to the plaintiff (exclusive of the damages suffered by the plaintiff because of the failure of the defendant to complete said audit within a reasonable time, which damages are the subject of the Fortieth cause of action herein) at least the sum of One million four hundred seventy-two thousand five hundred two dollars and seventy-one cents ($1,472,502.71) determined as follows:

The actual cost of constructing said vessels, Hull Nos. 2505-2507, as aforesaid	$15,233,513.74
The actual cost of the work on said vessels, Hull Nos. 2508-2510, prior to the termination thereof as aforesaid	3,033,886.96
The aggregate of the fixed sums for profit for said three vessels,	

Hull Nos. 2505-2507, specified in said Article XIX of said contract as modified as in paragraph One Hundred Eighty-fourth hereof set out (3 times $461,122.24)	1,383,366.72
The maximum amount of savings on account of said vessels, Hull Nos. 2505-2507, specified in said Article XIX as so modified (3 times $200,000)	600,000.00
Portion of fixed sums for profit payable under said contract on account of said vessels, Hull Nos. 2508-2510 (i. e., 7.6923% of $3,033,886.96)	233,375.69
Total amount which became payable from the defendant to the plaintiff under said contract	$20,484,143.11
Deduct aggregate of payments made under said contract prior to the date of completion of said audit	19,011,640.40
Total amount (exclusive of the aforesaid damages) due from the defendant to the plaintiff	$ 1,472,502.71

One Hundred Ninety-second: No part of said sum of One million four hundred seventy-two thousand five hundred two dollars and seventy-one cents ($1,472,502.71) has been paid, although duly demanded, and said sum is now due and owing from

the defendant to the plaintiff with interest thereon from the first day of September, 1922.

NINETEENTH CAUSE OF ACTION

(Contract for Curtis Propelling Equipments, etc.)

Two Hundred Sixth: On or about the thirtieth day of September, 1919, the plaintiff and the defendant made and entered into a certain contract in writing covering the construction by the plaintiff for the defendant of six 12,000 horse-power Curtis Marine Propelling Equipments with Falk gears complete with spares and accessories, in accordance with the terms and provisions of said contract and the plans and specifications therein referred to, for the sum of One million six hundred sixty-one thousand six hundred and seventy dollars ($1,661,670) for said six equipments, and Forty thousand six hundred and fifty dollars ($40,650) for said six sets of spares accompanying said equipments, delivered complete f. o. b. cars as provided in said contract. A copy of said contract (without said plans and specifications) marked Exhibit 19 is hereto attached and made a part of this statement and the plaintiff prays leave to refer on the trial of this action to said plans and specifications.

Two Hundred Seventh: The plaintiff completed said six equipments and said six sets of spares in accordance with the terms and provisions of said contract and said plans and specifications and delivered the same complete to the defendant f. o. b. cars, as provided in Section 2 of Article I of said contract, on or before the first day of February,

1921. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed and the defendant took possession of and accepted said equipments and said spares as constructed in accordance with said plans and specifications and the terms and conditions of said contract.

Two Hundred Eighth: Upon the completion and delivery of said equipments and said spares as aforesaid there became due from the defendant to the plaintiff the sum of One million seven hundred two thousand three hundred and twenty dollars ($1,702,320), no part of which has been paid except the sum of One million six hundred twelve thousand three hundred dollars and forty-five cents ($1,612,300.45). The balance thereof amounting to Ninety thousand nineteen dollars and fifty-five cents ($90,019.55) is now due and owing from the defendant to the plaintiff with interest thereon from the first day of February, 1921, and, although duly demanded, no part of said balance has been paid.

TWENTIETH CAUSE OF ACTION

(Restoration of Leased Land at Wilmington)

Two Hundred Ninth: On or about the eighteenth day of February, 1918, the plaintiff and The Pusey & Jones Company, a Delaware corporation, and the defendant entered into an agreement, whereby the plaintiff and said The Pusey & Jones Company agreed to lease certain land belonging to The Pennsylvania Railroad Company in Wilmington, Delaware, and to erect barracks thereon to provide housing facilities for United States troops on guard duty at the shipyards of the plaintiff and of said The

Pusey & Jones Company at Wilmington, Delaware, and the defendant agreed to reimburse the plaintiff and said The Pusey & Jones Company for the expense thereof. Thereafter the plaintiff and said The Pusey & Jones Company leased said land from The Pennsylvania Railroad Company and constructed said barracks thereon in accordance with plans approved by the War Department of the United States of America, and the defendant reimbursed the plaintiff and said The Pusey & Jones Company from time to time for the expenditures made, both as rental for said land and for the cost of construction of said barracks. By the terms of the agreement of lease of said land it was provided, among other things, that upon the termination of said agreement of lease the lessees would remove from said land the buildings erected thereon and restore said land to its original condition.

Two Hundred Tenth: After the termination of said agreement of lease, in the latter part of the year 1919, the defendant, in accordance with the terms thereof, removed said barracks and on or about the 29th day of March, 1920, entered into an agreement with the plaintiff whereby the plaintiff agreed to provide for the restoration of said land and the defendant agreed to reimburse the plaintiff for the cost thereof. In accordance with said agreement, and at the direction and with the approval of the defendant, the plaintiff procured the restoration of said land to its original condition at a total cost to the plaintiff of Two thousand five hundred and seventy dollars ($2,570).

Two Hundred Eleventh: Upon the restoration of said land to its original condition as aforesaid, there became due from the defendant to the plaintiff

the sum of Two thousand five hundred and seventy dollars ($2,570), no part of which has been paid, although duly demanded, which sum is now due and owing to the plaintiff from the defendant with interest thereon from the first day of June, 1920.

* * * * * * *

Two Hundred and Ninety-seventh: Wherefore, by reason of the facts hereinabove in this statement set out, the plaintiff avers that there is justly due from and claims of the defendant in this suit the sum of Seven million six hundred ninety-one thousand four hundred dollars and fourteen cents ($7,691,400.14), together with interest on Ninety thousand nineteen dollars and fifty-five cents ($90,019.55) from the first day of February, 1921, on Two thousand five hundred seventy dollars ($2,570) from the first day of June, 1920, on Four thousand eight hundred ninety-two dollars and sixty-six cents ($4,892.66) from the twenty-third day of January, 1920, and on Seven million five hundred ninety-three thousand nine hundred seventeen dollars and ninety-three cents ($7,593,917.93) from the first day of September, 1922, together with the costs and disbursements of this suit.

CHARLES SINKLER,
Attorney for the Plaintiff.

CRAVATH, HENDERSON & DE GERSDORFF,
Of Counsel.

State of New York,
County of New York, ss:

Robert E. McMath, being duly sworn according to law, deposes and says that he is the Secretary of

Bethlehem Shipbuilding Corporation, Ltd., the plaintiff named in the foregoing statement of claim; that he has read the same and is familiar with the facts set forth therein, and is authorized to make this affidavit on behalf of the plaintiff corporation; that the facts set forth in said statement of claim so far as they have been made of his own knowledge are true, and so far as made upon information derived from others he is informed and verily believes them to be true; and all of said allegations the plaintiff corporation expects to be able to prove at the trial of the case.

ROBERT E. MCMATH

(Notarial Seal)

Sworn to and subscribed before me the 28th day of January, 1926.

Wm. J. Brown,
Notary Public, Kings County No. 246
Kings County Register No. 6245
Certificate filed in New York Co. No. 722-A
New York County Register No. 6145
Commission Expires March 30, 1926.

EXHIBIT 1-A

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

For Construction of Vessels

at

San Francisco, California.

Owner's Contract No. 177-S. C.
Owner's Hull Nos. 1127-1138
Contractor's Hull Nos. 5257-5268

Dated December 31st, 1917.

CONTRACT made this 31st day of December, 1917, between Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner), representing the United States of America, party of the second part.

Whereas, the Contractor is the lessee of certain real estate situated at San Francisco, in the State of California, and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau), twelve (12) steam, steel tank vessels of about ten thousand one hundred (10,100) tons dead weight carrying capacity each, complete with tanks, propelling machinery, full military requirements, auxiliaries and complete equipment, in accordance with Contractor's drawings and specifications (all drawings and specifications before becoming binding on the Owner must bear the acceptance of and approval by the Owner, or its duly authorized representative) hereto attached and made a part of this contract:

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of twelve (12) steel tank vessels, each of about ten thousand one hundred (10,100) tons dead weight carrying capacity, in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, in

cluding duly authorized changes therein. Said vessels shall be provided with oil tank fittings, equipment, machinery, devices and appliances, military requirements, and appurtenances of every kind, complete in all respects and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this contract.

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IX.

CASUALTY INSURANCE.

The Contractor agrees to insure to the satisfaction of the Owner as far as insurance shall be procurable at reasonable cost, against the liability of the Contractor and/or the Owner for injuries to or death of employees, workmen, or the public or others in, on, or about the work covered by this contract.

The Contractor shall to the best of its ability protect the Owner against claims for any infringements of patents or patent rights and for the use of any patented articles embodied or to be embodied in the

vessels, by suitable agreement satisfactory to the Owner as to the use of such patents or patent rights. The Owner will assume all costs, expenses and damages which it or the Contractor may be obliged to pay to procure such agreements, or to pay by reason of any infringement of patents or patent rights or the use of patent articles not covered by such agreements, pursuant to a decree by a proper court in any litigation involving the use of such patents, but the Contractor shall assist the Owner at the latter's expense, save for services of the Contractor's employees, in furnishing such evidence as to the use of the patents and other matters of fact as may be required by the Owner in such litigation. The Contractor shall promptly notify the Owner in writing of any claims of infringement that may from time to time be brought to the Contractor's attention.

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor on the contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

* * * * * * * * *

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the

Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and powers to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction in so far as they shall have been inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

* * * * * * *

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of constructing the vessels herein contracted for, shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit, (in addition to the amounts to be deposited and provided as in Article XXVIII hereof specified), in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work of constructing said twelve (12) vessels, to provide for payments to be made for materials, and for wages and salaries of persons employed upon said work. Such sums shall be used only for said purpose and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the owner until withdrawn as aforesaid; and upon final completion of this contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work

under this contract but not paid for from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profit shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the twelve (12) vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc. that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this Contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

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XIX.

PRICE.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided shall be the actual cost, plus

the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at said shipyard of Two million one hundred and twenty thousand dollars ($2,120,000). Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over that which would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any vessel in the execution of the work reach or exceed the sum of Two Million One Hundred and Twenty Thousand Dollars ($2,120,000) or such revised estimated cost in lieu thereof as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of Two Hundred and Ten Thousand Dollars ($210,000) for such vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sum for profit of Two Hundred and Ten Thousand Dollars ($210,000) one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

PROFITS WHEN PAYABLE.

Said fixed sum for profit of Two Hundred and Ten Thousand Dollars ($210,000) shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent. (10%) thereof as part payment on account of said profit, such payments of said ten per cent. (10%) to be continued until ninety per cent. (90%) of the entire amount of said fixed sum for profits shall have been paid to the Contractor. Thereafter further payments on account of said fixed sum for profit shall not be required until the vessel in respect of which such sum shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sum for profit and any additional profit over and above said Two Hundred and Ten Thousand Dollars ($210,000) determined as hereinbefore provided shall become immediately due and payable.

. . . . . .

XXII.

NOTICES AND PAYMENTS BY MAIL.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or to be delivered personally to

an executive officer or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to Bethlehem Shipbuilding Corporation, Ltd., South Bethlehem, Pennsylvania, and a copy to it at San Francisco, California, or to be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at South Bethlehem, Penn.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

* * * * * * * * *

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * * *

In witness whereof the parties have caused these presents to be executed by their proper corporate

officers and their corporate seals to be hereto affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

By J. W. POWELL,
Vice-President.

(Corporate Seal)

Attest:

A. N. ROBERTS,
Asst. Secretary.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

By CHARLES PIEZ,
Vice-President.

(Corporate Seal)

Attest:

LESTER SISLER,
Secretary.

Approved as to form

Date—2/2/18

W. H. W. Jr.
Legal Division

EXHIBIT 2-A

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

For Construction of Vessels

at

Wilmington, Delaware.

Owner's Contract No. 178-S. C.
Owner's Hull Nos.

Tankers 1139, 1140, 1141
Cargo 1142, 1143, 1144

Contractor's Hull Nos.

Tankers 3450, 3451, 3462
Cargo 3459, 3460, 3461

Dated December 31st, 1917.

CONTRACT made this 31st day of December, 1917, between Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of

Columbia (herein called the Owner), representing the United States of America, party of the second part.

Whereas, The Contractor is the owner of certain real estate situated at Wilmington, in the State of Delaware, and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau), three (3) steam, steel tank vessels of about seven thousand five hundred (7,500) tons dead weight carrying capacity each, and three (3) cargo vessels of about seven thousand four hundred (7,400) tons dead weight carrying capacity each, complete with propelling machinery, full military requirements, auxiliaries and complete equipment, and tanks in the case of tank vessels, in accordance with Contractor's drawings and specifications (all drawings and specifications before becoming binding on the Owner must bear the acceptance of and approval by the Owner, or its duly authorized representative) hereto attached and made a part of this contract:

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of three (3) steel tank vessels, each of about seven thousand five hundred (7,500) tons dead

weight carrying capacity, and three (3) cargo vessels of about seven thousand four hundred (7,400) tons dead weight carrying capacity, in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, including duly authorized changes therein. Said vessels shall be provided with equipment, machinery, devices and appliances, military requirements, oil tank fittings in the case of said tank vessels, and appurtenances of every kind, complete in all respects and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this Contract.

. . . . . .

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor on this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

* * * * * * * * *

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and power to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction in so far as they have been inspected and approved by the Owner shall be in the United States of America and that the title

to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

* * * * * * * *

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of constructing the vessels herein contracted for shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit (in addition to the amount to be deposited and provided as in Article XXVIII hereof specified), in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work of constructing said six (6) vessels, to provide for payments to be made for materials, and for wages and salaries of persons employed upon said work. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be

countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this Contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profit shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs, and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the six (6) vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as ma[illegible] be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:—

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this Contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this Contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

XIX.

PRICE—FIXED PROFIT.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at the Navy Yard of the United States at Philadelphia, Pennsylvania, of One million six hundred and twelve thousand dollars ($1,612,000) for each of said tank vessels, and of One million three hundred and fifty thousand dollars ($1,350,000) for each of said cargo vessels. Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the ves-

sel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any tank vessel in the execution of the work reach or exceed the sum of One million six hundred and twelve thousand dollars ($1,612,000) or of any cargo vessel in the execution of the work reach or exceed the sum of One million three hundred and fifty thousand dollars ($1,350,000), or such revised estimated cost in lieu thereof in any case as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of One hundred and sixty thousand dollars ($160,000) for such tank vessel, and One hundred and twenty-five thousand dollars ($125,000) for such cargo vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sums for profit of One hundred and sixty thousand dollars ($160,000), and One hundred and twenty-five thousand dollars ($125,000), respectively, one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

PROFITS, WHEN PAYABLE.

Said fixed sums for profit of One hundred and sixty thousand dollars ($160,000) and One hundred and twenty-five thousand dollars ($125,000) respectively, shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent. (10%) thereof as part payment

on account of said profit, such payments of said ten per cent. (10%) to be continued until ninety per cent. (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter further payments on account of said fixed sums for profit shall not be required until the vessel in respect of which such sums shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above said sums of One hundred and sixty thousand dollars ($160,000), and One hundred and twenty-five thousand dollars ($125,000), respectively, determined as hereinbefore provided shall become immediately due and payable.

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XXII.

NOTICES AND PAYMENTS BY MAIL.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or be delivered personally to an executive officer or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to Bethlehem Shipbuilding Corporation, Ltd., South Bethlehem, Penn-

sylvania, and a copy to it at Wilmington, Delaware, or be delivered personally to an executive officer or the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at South Bethlehem, Penna.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

* * * * * * * *

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * *

In witness whereof the parties have caused these presents to be executed by their proper corporate officers and their corporate seals to be hereto affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,
By J. W. POWELL,
Vice President.
(Corporate Seal)

Attest:

A. N. Roberts,
Assistant Secretary.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

By CHARLES PIEZ,
Vice President.

(Corporate Seal)

Attest:

LESTER SISLER,
Secretary.

Approved as to form

Date—2-2-18

W. H. W. Jr.
Legal Division

EXHIBIT 3.

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

For Construction of Vessels

at

SPARROW'S POINT, MARYLAND

Owner's Contract No. 179-S. C.
Owner's Hull Nos. 1145, 1146, 1147.
Contractor's Hull Nos. 4177, 4178, 4179

Dated December 31st, 1917

CONTRACT made this 31st day of December, 1917 between Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner), representing

the United States of America, party of the second part.

WHEREAS, the Contractor is the owner of certain real estate situate at Sparrows Point, in the State of Maryland, and the shipyard located thereon; and

WHEREAS, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau), three (3) steam, steel tank vessels of about ten thousand one hundred (10,100) tons dead weight carrying capacity each, complete with tanks, propelling machinery, full military requirements, auxiliaries and complete equipment, in accordance with Contractor's drawings and specifications (all drawings and specifications before becoming binding on the Owner must bear the acceptance of and approval by the Owner, or its duly authorized representative) hereto attached and made a part of this contract:

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of three (3) steel tank vessels, each of about ten thousand one hundred (10,100) tons dead weight carrying capacity, in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include every

thing covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, including duly authorized changes therein. Said vessels shall be provided with oil tank fittings, equipment, machinery, devices and appliances, military requirements, and appurtenances of every kind, complete in all respects, and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans, and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this Contract.

* * * * * * * * *

X.

LABOR.

The Contractor shall comply with all instructions not contrary to law as to wages or conditions of employment of labor on this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for

the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will in its discretion, also use its influence and powers to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction in so far as they shall have been inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the re-

placement of unsatisfactory workmanship and/or materials.

. . . . . .

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of constructing the vessels herein contracted for, shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit, in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work; to provide for payments to be made for materials, and for wages and salaries of persons employed upon the work hereunder. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the

final completion of this Contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profit shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of

actual costs and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the three (3) vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:—

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc. that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this Contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

. . . . . .

XIX.

PRICE—FIXED PROFIT.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein, as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918 at the Navy Yard of the United States at Norfolk, Virginia, of Two million and seventy thousand dollars ($2,070,000). Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any vessel in the execution of the work reach or exceed the sum of Two million and seventy thousand dollars ($2,070,000) or such revised estimated cost in lieu thereof as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of Two hundred thousand dollars ($200,000) for such vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase

of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sum for profit of Two hundred thousand dollars ($200,000) one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

PROFITS WHEN PAYABLE.

Said fixed sum for profit of two hundred thousand dollars ($200,000) shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent (10%) thereof as part payment on account of said profit, such payments of said ten per cent (10%) to be continued until ninety per cent (90%) of the entire amount of said fixed sum for profits shall have been paid to the Contractor. Thereafter further payments on account of said fixed sum for profit shall not be required until the vessel in respect of which such sum shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sum for profit and any additional profit over and above said Two hundred thousand dollars ($200,000) determined as hereinbefore provided shall become immediately due and payable.

* * * * * * *

XXII.

NOTICES AND PAYMENTS BY MAIL.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or be delivered personally to an executive officer or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to Bethlehem Shipbuilding Corporation, Ltd., South Bethlehem, Pennsylvania, and a copy to it to Sparrows Point, Maryland, or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at South Bethlehem, Penn.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner;

* * * * * * * * *

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit

that may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

In witness whereof the parties have caused these presents to be executed by their proper corporate officers and their corporate seals to be hereto affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

By J. W. POWELL,
Vice President.

(Corporate Seal)

Attest:

A. N. ROBERTS,
Asst. Secretary.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION

By CHARLES PIEZ,
Vice-President.

(Corporate Seal)

Attest:

LESTER SISLER,
Secretary.

Approved as to form

Date—2/2/18

W. H. W. Jr.
Legal Division

EXHIBIT 4

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

For Construction of Two (2) Troop Ships of about 10,000 Tons Dead Weight Carrying Capacity each,

at

Sparrow's Point, Maryland

Owner's Contract No. 182—S. C.

Owner's Hull Nos. 1164 to 1165 Inc.

Contractor's Hull Nos. 4180-4181

Dated December 31st, 1917.

CONTRACT made this 31st day of December, 1917, between Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District

of Columbia (herein called the Owner), representing the United States of America, party of the second part.

Whereas, the Contractor is the owner of certain real estate situated at Sparrow's Point, in the State of Maryland, and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau), two (2) troop ships of about 10,000 tons dead weight carrying capacity each complete in accordance with the drawings and specifications of the Owner hereto attached and made a part of this contract;

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of two (2) troop ships of about 10,000 tons dead weight carrying capacity each in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, including duly authorized changes therein. Said vessels shall be provided with equipment, machinery, devices and appliances, military requirements, and appurten-

ances of every kind, complete in all respects and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this Contract.

* * * * * * * *

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor on this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the

Contractor to secure with the utmost practical expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and powers to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction in so far as they shall have been inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

* * * * * * * *

XIV.

* * * * * * * *

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of constructing the vessels herein contracted for,

shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit, in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work, for payments to be made for materials, and for wages and salaries of persons employed upon the work hereunder. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work un-

der this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profit shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the two (2) vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:—

(a) The net cost, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this Contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc. that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

* * * * * * * * *

XIX

PRICE.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost deter-

mined as in Article XVII hereof provided, plus the sum for profit equal to ten per cent (10%) of the amount of such cost.

PROFITS WHEN PAYABLE.

Said profit shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent (10%) thereof as part payment on account of said profit, such payments of said ten per cent (10%) to be continued until ninety per cent (90%) of the entire amount of said profit shall have been paid to the Contractor. Thereafter further payments on account of said profit shall not be required until the vessel in respect of which such sum shall be payable shall have been completed, delivered and accepted by the Owner.

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XXII.

NOTICES AND PAYMENTS BY MAIL.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or be delivered personally to an executive officer or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to Bethlehem Shipbuilding Corporation, Ltd., South Bethlehem, Pennsylvania, and a copy to it at Sparrow's Point, Mary-

land, or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at South Bethlehem, Penna.

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XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may rise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * *

In witness whereof the parties have caused these presents to be executed by their proper corporate officers and their corporate seals to be hereto affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

By J. W. POWELL,
Vice-President.

(Corporate Seal)

Attest:

A. N. ROBERTS,
Asst. Secretary.

UNITED STATES SHIPPING BOARD EMERGENCY
FLEET CORPORATION,

By CHARLES PIEZ,
Vice-President.

(Corporate Seal)

Attest:

LESTER SISLER,
Secretary.

Approved as to form

Date—2/4/18

W. H. W. Jr.
Legal Division

EXHIBIT 5.

CONTRACT

between

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION,
Ltd.

For Construction of Vessels

at

FORE RIVER, MASSACHUSETTS.

Owner's Contract No. 183-S. C.

Owner's Hull Nos. 1166, 1167, 1168

Contractor's Hull Nos. 1376, 1377, 1378

Dated December 31st, 1917

CONTRACT made this 31st day of December, 1917, between BETHLEHEM SHIPBUILDING CORPORATION, LTD., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a corporation organized under the laws of the District of Columbia (herein called the Owner),

representing the United States of America, party of the second part.

WHEREAS, the Contractor is the lessee of certain real estate situated at Fore River, in the State of Massachusetts, and the shipyard located thereon; and

WHEREAS, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau), three (3) steam, steel tank vessels of about nine thousand one hundred (9,100) tons dead weight carrying capacity each, complete with tanks, propelling machinery, full military requirements, auxiliaries and complete equipment, in accordance with Contractor's drawings and specifications (all drawings and specifications before becoming binding on the Owner must bear the acceptance of and approval by the Owner, or its duly authorized representative) hereto attached and made a part of this contract:

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of three (3) steel tank vessels, each of about nine thousand one hundred (9,100) tons dead weight carrying capacity, in accordance with the

plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, including duly authorized changes therein. Said vessel shall be provided with oil tank fittings, equipment, machinery, devices and appliances, military requirements, and appurtenances of every kind, complete in all respects, and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this Contract.

* * * * * * * *

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor on this contract given to it in

writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

* * * * * * * *

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner, will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and powers to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction in so far as they have been inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this con-

tract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

* * * * * * * * *

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article VXII) of constructing the vessels herein contracted for, shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit, in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work, to provide for payments to be made for materials, and for wages and salaries of persons employed upon the work hereunder. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such

sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profit shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the

Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the three (3) vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, the actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor

by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this Contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with

the work under this Contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

XIX.

PRICE—FIXED PROFIT.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at the Navy Yard of the United States at Boston, Mass., of One Million eight hundred and sixty-five thousand dollars ($1,865,000). Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any vessel in the execution of the work reach or exceed the sum of One million eight hundred and sixty-five thousand

dollars ($1,865,000) or such revised estimated cost in lieu thereof as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of One hundred and eighty-five thousand dollars ($185,000) for such vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sum for profit of One hundred and eighty-five thousand dollars ($185,000), one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

PROFITS, WHEN PAYABLE.

Said fixed sum for profit of One hundred and eighty-five thousand dollars ($185,000) shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent. (10%) thereof as part payment on account of said profit, such payments of said ten per cent. (10%) to be continued until ninety per cent. (90%) of the entire amount of said fixed sum for profits shall have been paid to the Contractor. Thereafter further payments on account of said fixed sum for profit shall not be required until the vessel in respect of which such sum shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made, together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sum for profit

and any additional profit over and above said One hundred and eighty-five thousand dollars ($185,000) determined as hereinbefore provided shall become immediately due and payable.

XXII.

NOTICES AND PAYMENTS BY MAIL.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or be delivered personally to an executive officer or the District Officer of the owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to Bethlehem Shipbuilding Corporation, Ltd., South Bethlehem, Pennsylvania, and a copy to it at Quincy, Mass., or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at South Bethlehem, Pennsylvania.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or parts of this contract, or to any benefit that may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * *

IN WITNESS WHEREOF, the parties have caused these presents to be executed by their proper corporate officers and their corporate seals to be hereto affixed and attached, as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

By J. W. POWELL
Vice-President.

(Corporate Seal)

Attest:

A. N. ROBERTS
Asst. Secretary.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

By CHARLES PIEZ
Vice-President.

(Corporate Seal)

Attest:

LESTER SISLER
Secretary.

Approved as to Form

Date—2/4/18

W. H. W. Jr.
Legal Division

EXHIBIT 6.

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

For Construction of Four (4) Steam Steel Cargo Vessels

at

SAN FRANCISCO, CALIFORNIA.

Owner's Contract No. 191-S. C.

Owner's Hull Nos. 1220, 1221, 1222, 1223.

Contractor's Hull Nos. 150, 151, 153, 170.

Dated December 31st, 1917.

CONTRACT made this 31st day of December, 1917, between Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corpo-

ration organized under the laws of the District of Columbia (herein called the Owner) representing the United States of America, party of the second part.

WHEREAS, the Contractor is the lessee of certain real estate situated at San Francisco, in the State of California, and the shipyard located thereon; and

Whereas, the Owner placed an order with the Contractor to complete at said shipyard of the Contractor, under the rules and regulations of Lloyd's four (4) steam, steel cargo vessels, complete with propelling machinery full military requirements (including war zone requirements), auxiliaries and complete equipment, in accordance with Contractor's drawings and specifications hereto attached and made a part of this contract, having Contractor's Hull Numbers and approximate dead weight capacities, respectively as follows:

Contractor's Hull Number	Approximate Dead Weight Capacity
150	11,800 tons
151	11,700 "
153	11,800 "
170	12,000 "

Now, therefore, this agreement witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of said four (4) steel, cargo vessels in

accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, including duly authorized changes therein. Said vessels shall be provided with equipment, machinery, devices and appliances, military requirements, and appurtenances of every kind, complete in all respects and ready for service, including service in war zone, as provided for in the specifications, and shall be delivered to the owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this contract.

* * * * * * * * *

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of em-

ployment of labor on this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

* * * * * * * *

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and powers to secure, for the Contractor, rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction in so for as they shall have been inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or

used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

* * * * * * * * *

XV.

PAYMENT OF ACTUAL COST

The total actual cost (as defined in Article XVII) of constructing the vessels herein contracted for, shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary to pay for work already done and materials already furnished and for carrying on the work under this contract, the Owner will from time to time deposit, in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work, to provide for payments to be made for materials, and for wages and salaries of persons employed upon the work hereunder. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized repre-

sentatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon final completion of this contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profit shall be payable at the time and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the

Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual cost and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to the shipyard and to the Contractor's offices to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the four (4) vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses), and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

* * * * * * * *

XIX.

PRICE.

The price to be paid for such vessels to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at said shipyard of the Contractor as follows:

Hull Number	Estimated Actual Cost
150	$2,124,000
151	2,106,000
153	2,124,000
170	2,160,000

Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be in-

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curred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications hereafter made by the authority of the Owner. Should the actual cost of any of said vessels in the execution of the work reach or exceed the sum above mentioned as the estimated actual cost thereof, or such revised estimated cost in lieu thereof as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sums for profit for said vessels, respectively, as follows:—

Hull Number	Fixed Sum for Profit
150	$212,400
151	210,600
153	212,400
170	216,000

Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sums for profit respectively one half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

PROFITS WHEN PAYABLE.

Said fixed sums for profit respectively shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent (10%) thereof as part payment on account of said profit, such payments of

said ten per cent (10%) to be continued until ninety per cent (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter further payments on account of said fixed sums for profit shall not be required until the vessel in respect of which such sums shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above the fixed sums for profit mentioned above respectively, determined as hereinbefore provided shall become immediately due and payable.

* * * * * * * *

XXII.

NOTICES AND PAYMENTS BY MAIL.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or be delivered personally to an executive officer or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to Bethlehem Shipbuilding Corporation, Ltd., South Bethlehem, Pennsylvania, and a copy to it at San Francisco, California, or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at South Bethlehem, Penn.

XXIII.

PROTECTION OF OWNER'S INTEREST.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

* * * * * * * * *

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * * *

In Witness Whereof the parties have caused these presents to be executed by their proper corporate officers and their corporate seals to be hereto affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

By J. W. POWELL
Vice-President.

(Corporate Seal)

Attest:

A. N. ROBERTS
Assistant Secretary.

UNITED STATES SHIPPING BOARD EMERGENCY
FLEET CORPORATION

By CHARLES PIEZ
Vice-President.

(Corporate Seal)

Attest:

LESTER SISLER
Secretary

EXHIBIT 7

CONTRACT

between

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION,
Ltd.

For Construction of One (1) Steam Steel Cargo Vessel of about Seven Thousand Four Hundred (7,400) Tons Dead Weight Carrying Capacity
at
SPARROWS POINT, MARYLAND.

Owner's Contract No. 196—S. C.
Owner's Hull No.
Contractor's Hull No. 176.

Dated December 31st, 1917.

CONTRACT made this 31st day of December, 1917, between BETHLEHEM SHIPBUILDING CORPORATION, LTD., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a

corporation organized under the laws of the District of Columbia (herein called the Owner), representing the United States of America, party of the second part.

Whereas, the Contractor is the owner of certain real estate situated at Sparrows Point, in the State of Maryland, and the shipyard located thereon; and

Whereas, the Owner has placed with the Contractor an order to complete at said shipyard of the Contractor, under the rules and regulations of Lloyds the construction of one (1) steam, steel cargo vessel of about seven thousand four hundred (7,400) tons dead weight carrying capacity, known as the Contractor's Hull No. 176, complete with propelling machinery, full military requirements (including war zone requirements), auxiliaries and complete equipment, in accordance with Contractor's drawings and specifications hereto attached and made a part of this contract:

Now, therefore, this contract Witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of one (1) steel cargo vessel of about seven thousand four hundred (7,400) tons dead weight carrying capacity in accordance with the plans and specifications aforesaid. The construction of said vessel (the word "vessel" as used

throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, including duly authorized changes therein. Said Vessel shall be provided with equipments, machinery, devices and appliances, military requirements, and appurtenances of every kind, complete in all respects and ready for service including service in war zone as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor (it being understood that Hull 176 is to be as nearly as may be a duplicate of Hull 173 with all changes ordered therein to date including full military requirements and that the specifications and drawings attached hereto so provide).

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of said vessel as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this Contract.

* * * * * * * * *

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of em-

ployment of labor on this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

. . . . . .

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and powers to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to the vessel either completed or under construction in so far as it shall have been inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used

in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

. . . . . .

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of constructing the vessel herein contracted for, shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary to pay for work already done on the vessel and for material already furnished therefor and for carrying on the work under this contract, the Owner will from time to time deposit, in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work, to provide for payments to be made for materials, and for wages and salaries of persons employed upon the work hereunder. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance

by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessel. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profit shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the

Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to the said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the vessel herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of the vessel from any others being built at the shipyards of the Contractor.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessel shall include the following, and items similar thereto in principle:—

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and

entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessel, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessel constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessel under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, shall be

determined by arbitration in the manner provided for in Article XX.

* * * * * * * * *

XIX.

PRICE—FIXED PROFIT.

The price to be paid for the vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at the Navy Yard of the United States at Norfolk, Virginia, of One Million Two Hundred and Ninety-five Thousand Dollars ($1,295,000); Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications hereafter made by the authority of the Owner. Should the actual cost of the vessel in the execution of the work reach or exceed the sum of One Million Two Hundred and Ninety-five Thousand Dollars ($1,295,000) or such revised estimated cost in lieu thereof as shall

be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of One Hundred and Twenty-nine Thousand Five Hundred Dollars ($129,500) for the vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on the vessel in addition to said fixed sum for profit of One Hundred and Twenty-nine Thousand Five Hundred Dollars ($129,500) one-half the amount by which such actual cost of the vessel falls short of the estimated cost revised as aforesaid.

PROFIT, WHEN PAYABLE.

Said fixed sum for profit of One Hundred and Twenty-nine Thousand Five Hundred Dollars ($129,500) shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessel there shall be added and paid ten per cent. (10%) thereof as part payment on account of said profit, such payments of said ten per cent. (10%) to be continued until ninety per cent. (90%) of the entire amount of said fixed sum for profits shall have been paid to the Contractor. Thereafter further payments on account of said fixed sum for profit shall not be required until the vessel shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sum for profit and any additional profit over and above said One Hundred and Twenty-nine Thousand Five Hundred

Dollars ($129,500) determined as hereinbefore provided shall become immediately due and payable.

XXII.

NOTICES AND PAYMENTS BY MAIL.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or to be delivered personally to an executive officer or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to Bethlehem Shipbuilding Corporation, Ltd., South Bethlehem, Pennsylvania, and a copy to it at Sparrows Point, Maryland, or to be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at South Bethlehem, Penn.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * * *

In Witness Whereof the parties have caused these presents to be executed by their proper corporate officers and their corporate seals to be hereto affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.,

By J. W. POWELL
Vice President.

(Corporate Seal)

Attest:

A. N. ROBERTS
Asst. Secretary.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

By CHARLES PIEZ
Vice President.

(Corporate Seal)

Attest:

LESTER SISLER
Secretary.

Approved as to form

Date—2/21/18

W. H. W. Jr.
Legal Division.

EXHIBIT 8

CONTRACT
between
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION
and
BETHLEHEM SHIPBUILDING CORPORATION, Ltd.,
For Construction of Vessels
at
SPARROWS POINT, MARYLAND

Owners' Contract No. 226—S. C.
Owner's Hull Nos.

Cargo 1548-49-50
Tanks 1551-54

Contractor's Hull Nos.

Cargo 4182-3-4
Tanks 4185-6-7-8

Dated March 18th, 1918

CONTRACT made this eighteenth day of March, 1918, between the Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United

States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner) representing the United States of America, party of the second part.

Whereas, the Contractor is the owner of certain real estate situated at Sparrows Point in the State of Maryland and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau,) four (4) steam, steel tank vessels of about ten thousand one hundred (10,100) tons dead weight carrying capacity each, and three (3) cargo vessels of about seven thousand four hundred (7,400) tons dead weight carrying capacity each, complete with propelling machinery, full military requirements, auxiliaries and complete equipment, and tanks in the case of tank vessels in accordance with Contractor's drawings and specifications attached to United States Shipping Board Emergency Fleet Corporation Contract #179—S. C. for the tank vessels and to contract #178—S. C. for the cargo vessels.

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of four (4) steel tank vessels, each of

about ten thousand one hundred (10,100) tons dead weight carrying capacity, and three (3) cargo vessels of about seven thousand four hundred (7,400) tons dead weight carrying capacity, in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, including duly authorized changes therein. Said vessels shall be provided with equipment, machinery, devices and appliances, military requirements, oil tank fittings in the case of said tank vessels, and appurtenances of every kind, complete in all respects and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this contract.

* * * * * * * *

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor in this contract given to it in writing by the Owner. The Owner, in its discretion, will, give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

* * * * * * * *

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and power to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction so far as they have been

inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

* * * * * * * * *

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of construction of the vessels herein contracted for shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work of constructing said seven (7) vessels to provide for payments to be made for materials, and for wages and salaries of persons employed upon said work. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will

be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this Contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified by the District Officer. The Contractor's profits shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs, and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the seven (7) vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such a manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc. that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

* * * * * * * * * *

XIX.

PRICE.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918 at the Navy Yard of the United States, Norfolk, Virginia, of Two Million Dollars ($2,000,000.00) for each of said tank vessels and of One Million Two Hundred Ninety-five Thousand Dollars ($1,295,000.00) for each of said cargo vessels. Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall

also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any tank vessel in the execution of the work reach or exceed the sum of Two Million Dollars ($2,000,000.00) or of any cargo vessel in the execution of the work reach or exceed the sum of One Million Two Hundred Ninety-five Thousand Dollars ($1,295,000.00) or such revised estimated cost in lieu thereof in any case as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of Two Hundred Thousand Dollars ($200,000.00) for such tank vessel and One Hundred and Twenty-five Thousand Dollars ($125,000.00) for such cargo vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sums for profit of Two Hundred Thousand Dollars ($200,000.00) and One Hundred and Twenty-five Thousand Dollars ($125,000) respectively, one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

Said fixed sums for profit of Two Hundred Thousand Dollars ($200,000.00) and One Hundred and Twenty-five Thousand Dollars ($125,000.00) respectively shall be paid as follows:

PROFITS—WHEN PAYABLE.

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten percent (10%) thereof as part payment on account of said profit, such payments of said ten per-

cent. (10%) to be continued until ninety percent (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter, further payments on account of said fixed sums for profit shall not be required until the vessel in respect of which such sums shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above said sums of Two Hundred Thousand Dollars ($200,000.00) and One Hundred and Twenty-five Thousand Dollars ($125,000.00) respectively, determined as hereinbefore provided shall become immediately due and payable.

* * * * * * *

XXII.

NOTICES AND PAYMENTS.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or to be delivered personally to an executive or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the Bethlehem Shipbuilding Corporation, Ltd., South Bethlehem, Penna., and a copy to it at Sparrow's Point, Mary-

land, or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at South Bethlehem, Penna.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

* * * * * * *

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * *

In Witness Whereof the parties hereto have caused these presents to be executed by their proper corporate officers and their corporate seals to be affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

By J. W. POWELL,
Vice President.

(Corporate Seal)

Attest:

A. N. ROBERTS,
Asst. Secretary.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION

By CHARLES PIEZ,
Vice President.

(Corporate Seal)

Attest:

LESTER SISLER

Approved as to form

Date—4-23-18

W. H. W. Jr.
Legal Division

EXHIBIT 9.

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

For Construction of Vessels

at

San Francisco, California

Owner's Contract No. 230-S. C.

Owner's Hull Nos. 1574, 1575.

Contractor's Hull Nos. 215, 216

Dated April 22nd, 1918.

CONTRACT made this 22nd day of April, 1918, between the Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner), representing the United States of America, party of the second part.

Whereas, the Contractor is the lessee of certain real estate situated at San Francisco, in the State of California, and the shipyard located thereon; and

Whereas, the Owner placed an order with the Contractor to complete at said shipyard of the Contractor, under the rules and regulations of Lloyd's, two (2) steam, steel cargo vessels, complete with propelling machinery, full military requirements (including war zone requirements), auxiliaries and complete equipment, in accordance with Contractor's drawings and specifications hereto attached and made a part of this contract, having Contractor's Hull Numbers and approximate dead weight capacities, respectively as follows:

The Contractor's Hull Numbers.	Approximate Dead Weight Cap.
215	11,800 tons
216	11,800 tons.

Now, therefore, this agreement witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

1.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of said two (2) steel cargo vessels in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifica-

tions, including duly authorized changes therein. Said vessels shall be provided with equipment, machinery, devices and appliances, military requirements and appurtenances of every kind, complete in all respects and ready for service, including service in war zone, as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this contract.

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor on this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Con-

tractor will promptly notify the Owner of any labor difficulties.

* * * * * * * * *

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract, and will in its discretion also use its influence and powers to procure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels, either completed or under construction insofar as they shall have been inspected and approved by the Owners, shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

* * * * * * * * *

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of constructing the vessels herein contracted for, shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary to pay for work already done and materials already furnished and for carrying on the work under this contract, the Owner will from time to time deposit, in its own name in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work, to provide for payments to be made for materials, and for wages and salaries of persons employed upon the work hereunder. Such sums shall be used only for said purposes, and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representative. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this contract, or upon default hereunder upon the part of the Contractor, the Owner may withdraw without the signa-

ture of the Contractor any balance on hand in any bank account established under this Article.

OTHER ITEMS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payments shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profit shall be payable at the time and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be at all times adequate for the determination of actual costs, and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to the shipyard and to the Contractor's offices to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the two (2) vessels herein contracted for shall be computed in the manner defined in Article XVII hereof, and shall be kept in such manner and segregated into such items as may be necessary for the purposes of this contract, and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the said shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purpose of this contract, actual cost of the construction of the vessels shall include the following and items similar thereto, in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, man-

agement, salaries (including compensation by way of bonuses), and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance otherwise.

(f) A reasonable allowance according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

XIX.

Price.

The price to be paid for such vessels to be constructed and furnished in accordance with the terms

of this contract, including authorized changes therein as herein provided, shall be the actual cost plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board and in force on January 3, 1918, at said shipyard of the Contractor as follows:

Hull Numbers	Estimated Actual Cost
215	$2,075,000.00
216	$2,075,000.00

Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wage increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications hereafter made by the authority of the Owner. Should the actual cost of any of said vessels in the execution of the work reach or exceed the sum above mentioned as the estimated actual cost thereof, or such revised estimated cost in lieu thereof as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sums for profit for said vessels, respectively, as follows:

Hull Numbers	Fixed Sum for Profit
215	$207,500.00
216	$207,500.00

Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sums for profit respectively, one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

PROFITS WHEN PAYABLE.

Said fixed sums for profit respectively shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent (10%) thereof as part payment on account of said profit, such payments of said ten per cent (10%) to be continued until ninety per cent (90%) of the entire amount of said fixed sums for profits shall have been paid to the Contractor. Thereafter further payments on account of said fixed sums for profit shall not be required until the vessel in respect of which said sums shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above the fixed sums for profit mentioned above respectively determined as hereinbefore provided shall become immediately due and payable.

XXII.

NOTICES AND PAYMENTS BY MAIL.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation, Washington, D. C., or delivered personally to an executive officer or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or prepaid telegram (confirmed by mail) addressed to the Bethlehem Shipbuilding Corporation, Ltd., Bethlehem, Penna., and a copy to it at San Francisco, Calif., or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at Bethlehem, Penna.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

* * * * * * *

XXV.

PARTICIPATION IN PROFIT.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but the Article shall not apply

to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * *

In witness whereof the parties have caused these presents to be executed by their proper corporate officers and their corporate seals to be hereto affixed and attached as of the day and year first above noted.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,
By
J. W. POWELL,
Vice-President

(Corporate Seal)

Attest:

A. N. ROBERTS
Asst. Secretary

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION
By
EDWARD N. HURLEY
President

(Corporate Seal)

Attest:

STEPHEN BOURNE
Secretary

Approved as to form	O. K.	O. K.	O. K
Date—5-4-18	U	C. P.	O.B.P.
W. H. W. Jr.		O. K.	
Legal Division		S.A.D. Jr.	
		B. C.	

EXHIBIT 10.

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

for Construction of Vessels

at

Fore River, Mass.

Owner's Contract No. 299-S. C.

Owner's Hull Nos. 1670-71-72.

Contractor's Hull Nos. 1379-80-81.

Dated April 30th, 1918

CONTRACT made this thirtieth day of April, 1918 between the Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner) representing the United States of America, party of the second part.

Whereas, the Contractor is the owner of certain real estate situated at Fore River in the State of Massachusetts and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau) three (3) steam, steel tank vessels of about nine thousand one hundred (9,100) tons dead weight carrying capacity each, complete with tanks, propelling machinery, full military requirements, auxiliaries and complete equipment, in accordance with contractor's drawings and specifications (all drawings and specifications before becoming binding on the Owner must bear the acceptance of and approval of the Owner, or its duly authorized representative) hereto attached and made part of this contract.

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of three (3) steel tank vessels each of about nine thousand one hundred (9,100) tons dead weight carrying capacity, in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all

respects to the aforesaid plans and specifications including duly authorized changes therein. Said vessels shall be provided with oil tank fittings, equipment, machinery, devices and appliances, military requirements and appurtenances of every kind, complete in all respects and ready for service as provided for in the specifications and shall be delivered to the Owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this contract.

X.

LABOR.

The Contractor will comply with all instructions not contrary to law, as to wages or conditions of employment of labor in this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and power to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction so far as they have been inspected and aproved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of construction of the vessels herein contracted for shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit in its own name, in advance for the purpose of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work of constructing said vessels, to provide for payments to be made for materials, and for wages and salaries of persons employed upon said work. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this Contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without the signa-

ture of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profits shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs, and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such a manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way

of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc. that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

* * * * * * * * *

XIX.

PRICE.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms

of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at the Navy Yard of the United States at Boston, Massachusetts, of One Million Eight Hundred and Fifty Thousand Dollars ($1,850,000) for each of said tank vessels. Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any tank vessel in the execution of the work reach or exceed the sum of One Million Eight Hundred and Fifty Thousand Dollars ($1,850,000) or such revised estimate cost in lieu thereof in any case as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of One Hundred and Eighty-five Thousand Dollars ($185,000) for such tank vessels. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sums for

profit of One Hundred and Eighty-five Thousand Dollars ($185,000), one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

PROFITS WHEN PAYABLE.

Said fixed sums for profit of One Hundred and Eighty-five Thousand Dollars ($185,000) shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent. (10%) thereof as part payment on account of said profit, such payments of said ten per cent. (10%) to be continued until ninety per cent. (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter, further payments on account of said fixed sums for profit shall not be required until the vessel in respect of which such sums shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above said sums of One Hundred and Eighty-five Thousand Dollars ($185,000), determined as hereinbefore provided shall become immediately due and payable.

* * * * * * * * *

XXII.

NOTICES AND PAYMENTS.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram

(confirmed by mail) addressed to the United States Shipping Board, Emergency Fleet Corporation at Washington, D. C., or to be delivered personally to an executive or the District Officer of the Owner,

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the Bethlehem Shipbuilding Corporation, Ltd., Bethlehem, Penna., and a copy to it at Fore River, Massachusetts or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at Bethlehem, Penna.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interests of the owner.

* * * * * * * * *

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * * *

In witness whereof the parties hereto have caused these presents to be executed by their proper corporate officers and their corporate seals to be affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

By H. E. LEWIS,
Vice-President.

(Corporate Seal)

Attest:

A. N. ROBERTS,
Assistant Secretary.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION

By HOWARD COONLEY,
Vice-President.

(Corporate Seal)

Attest:

STEPHEN BOURNE,

Approved as to form — OK. D.H.C.

Date—5-20-18 — U.

W. H. W. Jr.
Legal Division

EXHIBIT 11.

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

For Construction of Vessels
at
Sparrow's Point Plant—Sparrow's Point, Md.

Owner's Contract No. 300—S. C.
Owner's Hull Nos. 1673-4-5
Contractor's Hull Nos: 4189-90-91

Dated April 30, 1918

CONTRACT made this thirtieth day of April, 1918, between the Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner) representing the United States of America, party of the second part.

Whereas, the Contractor is the owner of certain real estate situated at Sparrow's Point in the State of Maryland and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau) three (3) steam, steel tank vessels of about ten thousand one hundred (10,100) tons dead weight carrying capacity each, complete with tanks, propelling machinery, full military requirements, auxiliaries and complete equipment in accordance with contractor's drawings and specifications (all drawings and specifications before becoming binding on the Owner must bear the acceptance of and approval of the Owner or its duly authorized representative) hereto attached and made part of this contract.

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of three (3) steel tank vessels, each of about ten thousand one hundred (10,100) tons dead weight carrying capacity, in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all

respects to the aforesaid plans and specifications, including duly authorized changes therein. Said vessels shall be provided with oil tank fittings, equipment, machinery, devices and appliances, military requirements and appurtenances of every kind, complete in all respects, and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said ship yard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions and substitutions shall be paid for by the Owner on the same basis as any other work performed under this contract.

* * * * * * * *

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor in this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Con-

tractor will promptly notify the Owner of any labor difficulties.

* * * * * * * *

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and power to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction so far as they have been inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the re-

placement of unsatisfactory workmanship and/or materials.

* * * * * * * *

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of construction of the vessels herein contracted for shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work of constructing said vessels to provide for payments to be made for materials, and for wages and salaries of persons employed upon said work. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as afore-

said; and upon the final completion of this Contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profits shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of

actual costs, and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such a manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc. that shall be used in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot; vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

* * * * * * * *

XIX.

PRICE.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at the Navy Yard of the United States, Norfolk, Virginia, of TWO MILLION DOLLARS ($2,000,000.00) for each of said tank vessels. Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any tank vessel in the execution of the work reach or exceed the sum of TWO MILLION DOLLARS ($2,000,000.00) or such revised estimate cost in lieu thereof in any case as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of TWO HUNDRED THOUSAND DOLLARS ($200,000.00)

for such tank vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes; the Contractor shall be allowed as profit on each vessel in addition to said fixed sums for profit of TWO HUNDRED THOUSAND DOLLARS ($200,000.00), one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

PROFITS WHEN PAYABLE.

Said fixed sums for profit of TWO HUNDRED THOUSAND DOLLARS ($200,000.00) shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten percent (10%) thereof as part payment on account of said profit, such payments of said ten percent (10%) to be continued until ninety percent (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter, further payments on account of said fixed sums for profit shall not be required until the vessel in respect of which such sums shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above said sums of TWO HUNDRED THOUSAND DOLLARS ($200,000.00), determined as hereinbefore provided shall become immediately due and payable.

XXII.

NOTICES AND PAYMENTS.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board, Emergency Fleet Corporation at Washington, D. C., or be delivered personally to an executive or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the Bethlehem Shipbuilding Corporation, Ltd., Bethlehem, Penna., and a copy to it at Sparrow's Point, Maryland, or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at Bethlehem, Penna.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

* * * * * * * * *

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that

may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * *

IN WITNESS WHEREOF the parties hereto have caused these presents to be executed by their proper corporate officers and their corporate seals to be affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

By H. E. LEWIS
Vice President

(Corporate seal)

Attest:

A. N. ROBERTS,
Assistant Secretary.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION

By HOWARD COONLEY
Vice Pres.

(Corporate seal).

Attest:

STEPHEN BOURNE

Approved as to form O. K.

Date—5/20/18 U.

W. H. W. JR.
Legal Division

EXHIBIT 12.

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

and

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

For Construction of Vessels at
UNION PLANT
Alameda Works—Alameda, Cal.

Owner's Contract No. 301-S. C.
Owner's Hull Nos. 1676-1687, incl.
Contractor's Hull Nos. 5269-5280.

Dated April 30, 1918.

CONTRACT made this thirtieth day of April, 1918, between the Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner) representing the United States of America, party of the second part.

Whereas, the Contractor is the owner of certain real estate situated at San Francisco in the State of California and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau) six (6) steam, steel tank vessels of about ten thousand one hundred (10,100) tons dead weight carrying capacity each, and six (6) cargo vessels of about eleven thousand eight hundred (11800) tons dead weight carrying capacity each, complete with propelling machinery, full military requirements, auxiliaries and complete equipment, and tanks in the case of tank vessels in accordance with Contractor's drawings and specifications (all drawings and specifications before becoming binding on the Owner, must bear the acceptance and approval of the Owner, or its duly authorized representative) hereto attached and made a part of this contract.

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of six (6) steel tank vessels, each of about ten thousand one hundred (10,100) tons dead weight carrying capacity, and six (6) cargo vessels of about eleven thousand eight hundred (11800) tons dead weight carrying capacity, in accordance with

the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, including duly authorized changes therein. Said vessels shall be provided with equipment, machinery, devices and appliances, military requirements, oil tank fittings in the case of said tank vessels, and appurtenances of every kind, complete in all respects and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this contract.

* * * * * * * *

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor in this contract given to it in

writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

* * * * * * * *

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by-law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and power to secure for the Contractor rail and /or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction so far as they have been inspected and approved by the Owners shall be in the United States of America and that the title to all material for the furtherance of work under his contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the

Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

* * * * * * * *

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of construction of the vessels herein contracted for shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work of constructing said vessels to provide for payments to be made for materials, and for wages and salaries of persons employed upon said work. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payment so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as afore-

said; and upon the final completion of this Contract or upon default hereunder upon the part of the Contractor the owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profits shall be payable at the times and in the manner hereinafter in Article XVI specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination

of actual costs, and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such a manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

* * * * * * *

XIX.

PRICE.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at said Shipyard of Two Million One Hundred Thousand Dollars ($2,100,000.00) for each of said tank vessels and Two Million, Seventy-five Thousand Dollars ($2,075,000.00) for each of said cargo vessels. Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any tank vessel in the execution of the work reach or exceed the sum of Two Million, One Hundred Thousand Dollars ($2,100,000.00) or of any cargo vessel in the execution of the work reach or exceed the sum of Two Million, Seventy-five Thousand Dollars ($2,075,000.00) or such re-

vised estimate cost in lieu thereof in any case as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of Two Hundred Ten Thousand Dollars ($210,000.00) for such tank vessel and Two Hundred Seven Thousand Five Hundred Dollars ($207,500.00) for such cargo vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sums for profit of Two Hundred Ten Thousand Dollars ($210,000.00) and Two Hundred Seven Thousand Five Hundred Dollars ($207,500) respectively, one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

Said fixed sums for profit of Two Hundred Ten Thousand Dollars ($210,000.00) and Two Hundred Seven Thousand Five Hundred Dollars, ($207,500.00) respectively shall be paid as follows:

PROFITS WHEN PAYABLE.

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten percent (10%) thereof as part payment on account of said profit, such payments of said ten percent (10%) to be continued until ninety percent (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter, further payments on account of said fixed sums for profit shall not be required until the vessel in respect of which such sums shall be payable shall have been completed, delivered and accepted by the

Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above said sums of Two Hundred Ten Thousand Dollars ($210,000.00) and Two Hundred Seven Thousand Five Hundred Dollars ($207,500.00) respectively, determined as hereinbefore provided shall become immediately due and payable.

* * * * * * * *

XXII.

NOTICES AND PAYMENTS.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board, Emergency Fleet Corporation at Washington, D. C., or to be delivered personally to an executive or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the Bethlehem Shipbuilding Corporation, Ltd., Bethlehem, Penna., and a copy to it at San Francisco, Cal. or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at Bethlehem, Penna.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

* * * * * * * *

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * *

In Witness Whereof the parties hereto have caused these presents to be executed by their proper corporate officers and their corporate seals to be affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

By H. E. LEWIS,
Vice President

(Corporate Seal)

Attest:

A. N. Roberts,
Assistant Secretary.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION.

By HOWARD COONLEY,
Vice Pres.

(Corporate Seal)

Attest:

STEPHEN BOURNE

Approved as to form. O. K.

Date—5-20-18. U

W. H. W. Jr. D. H. C.

EXHIBIT 13.

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

for Construction of Vessels

at

ELIZABETHPORT, NEW JERSEY

Owner's Contract No. 313—S. C.

Owner's Hull Nos. 1897-1906 inc.

Contractor's Hull Nos. 2138-2147 inc.

Dated May 15th, 1918

CONTRACT made this fifteenth day of May, 1918, between the Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner) representing the United States of America, party of the second part.

Whereas, the Contractor is the owner of certain real estate situated at Elizabethport in the State of New Jersey and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard of the Contractor, ten (10) tug boats, complete with propelling machinery, auxiliaries and complete equipment, in accordance with drawings and specifications furnished by the Owner and hereto attached and made a part of this contract.

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of ten (10) tug boats, in accordance with the plans and specifications aforesaid. The Construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, including duly authorized changes therein. Said vessels shall be provided with equipment, machinery, devices and appliances, and appurtenances of every kind, complete in all respects and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor.

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and power to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction so far as they have been inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

XV.

PAYMENT OF ACTUAL COSTS.

The total actual cost (as defined in Article XVII) of construction of the vessels herein contracted for shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work of constructing said vessels, to provide for payments to be made for materials, and for wages and salaries of persons employed upon said work. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this Contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without

the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profits shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs, and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's office, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such a manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net cost, after deducting all discount obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs,

and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bond or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

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XIX.

PRICE.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at the Navy Yard of the United States, Brooklyn, in the City of New York, of Three Hundred Thousand Dollars ($300,000) for each of said vessels. Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost from those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any vessel in the execution of the work reach or exceed the sum of Three Hundred Thousand Dollars ($300,000) or such revised estimate cost in lieu thereof in any case as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of Thirty Thousand Dollars ($30,000) for such vessel.

Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sums for profit of Thirty Thousand Dollars ($30,000), one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

PROFITS, WHEN PAYABLE.

Said fixed sums for profit of Thirty Thousand Dollars ($30,000) shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent (10%) thereof as part payment on account of said profit, such payments of said ten per cent (10%) to be continued until ninety per cent (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter, further payments on account of said fixed sums for profit shall not be required until the vessel in respect of which such sums shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above said sums of Thirty Thousand Dollars ($30,000), determined as hereinbefore provided, shall become immediately due and payable.

XXII.

NOTICES AND PAYMENTS.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or to be delivered personally to an executive or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the Bethlehem Shipbuilding Corporation, Ltd., Bethlehem, Penna., and a copy to it at Elizabethport, New Jersey, or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at Bethlehem, Penna.

* * * * * * * * *

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner, is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * * *

In witness whereof the parties hereto have caused these presents to be executed by their proper corporate officers and their corporate seals to be affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

H. E. LEWIS,
Vice-President

(Corporate Seal)

Attest:

A. N. ROBERTS,
Assistant Secretary

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

HOWARD COONLEY,
Vice-President

(Corporate Seal)

Attest:

C. BRADFORD FRALEY,
Asst. Sec.

Approved:

T. ED. SKEEL,
Asst. Comptroller

Approved:

DANIEL H. COX,
Manager Division of Steel Ship Construction

Approved as to form:

Date—6-15-18,
WILLIAM H. WHITE, JR.,
Legal Division.

EXHIBIT 14.

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

For Construction of Vessels

at

WILMINGTON, DELAWARE

Owner's Contract No. 314

Owner's Hull Nos.

(Cargo Vessels 1975 to 1981 inc.
(Tankers 1982 to 1984 inc.

Contractor's Hull Nos.

(Cargo Vessels 3463 to 3469 inc.
(Tankers 3470 to 3472 inc.

Dated May 15th, 1918.

CONTRACT made this fifteenth day of May, 1918, between the Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor),

party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner) representing the United States of America, party of the second part.

Whereas, the Contractor is the owner of certain real estate situated at Wilmington, in the State of Delaware and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau) three (3) steam, steel tank vessels of about seven thousand five hundred (7,500) tons dead weight carrying capacity each, and seven (7) cargo vessels of about five thousand one hundred (5,100) tons dead weight carrying capacity each, complete with propelling machinery, full military requirements, auxiliaries and complete equipment, and tanks in the case of tank vessels in accordance with Contractor's drawings and specifications (all drawings and specifications before becoming binding on the Owner, must bear the acceptance and approval of the Owner or its duly authorized representative) hereto attached and made part of this contract.

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of three (3) steel tank vessels, each of

about seven thousand five hundred (7,500) tons dead weight carrying capacity, and seven (7) cargo vessels of about five thousand one hundred (5,100) tons dead weight carrying capacity, in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, including duly authorized changes therein. Said vessels shall be provided with equipment, machinery, devices and appliances, military requirements, oil-tank fittings in the case of said tank vessels, and appurtenances of every kind, complete in all respects and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this contract.

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor in this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and power to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction so far as they have been inspected and approved by the Owner shall be in the United States of America and that the title to all

material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

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XV.

PAYMENTS OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of construction of the vessels herein contracted for shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work of constructing said vessels to provide for payments to be made for materials, and for wages and salaries of persons employed upon said work. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and

substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposit shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this Contract or upon default hereunder upon the part of the Contractor the owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profits shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract. The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All state-

ments and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs, and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such a manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor

by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any

dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

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XIX.

PRICE.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at the Navy Yard of the United States at Philadelphia, Pennsylvania, of One million five hundred and sixty thousand dollars ($1,560,000) for each of said tank vessels and of Nine hundred and eighty thousand dollars ($980,000) for each of said cargo vessels. Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost from those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any tank vessel in the execution of the work reach

or exceed the sum of One million five hundred and sixty thousand dollars ($1,560,000) or of any cargo vessel in the execution of the work reach or exceed the sum of Nine hundred and eighty thousand dollars ($980,000) or such revised estimate cost in lieu thereof in any case as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of One hundred and fifty-six thousand dollars ($156,000) for such tank vessel and Ninety-eight thousand dollars ($98,000) for such cargo vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sums for profit of One hundred and fifty-six thousand dollars ($156,000) and Ninety-eight thousand dollars ($98,000) respectively, one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

PROFITS WHEN PAYABLE.

Said fixed sums for profit of One hundred and fifty-six thousand dollars ($156,000) and Ninety-eight thousand dollars ($98,000) respectively shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent (10%) thereof as part payment on account of said profit, such payments of said ten per cent (10%) to be continued until ninety per cent (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter, further payments on account of said fixed

sums for profit shall not be required until the vessel in respect of which such sums shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above said sums of One hundred and fifty-six thousand dollars ($156,000) and Ninety-eight thousand dollars ($98,000) respectively, determined as hereinbefore provided shall become immediately due and payable.

* * * * * * * * *

XXII.

NOTICES AND PAYMENTS.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or to be delivered personally to an executive or the District Officer of the Owner.

All notices in writing from the Owner to the contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the Bethlehem Shipbuilding Corporation, Ltd., Bethlehem, Penna., and a copy to it at Wilmington, Delaware, or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check.

addressed to the Contractor by mail at Bethlehem, Penna.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

* * * * * * * *

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * *

In witness whereof the parties hereto have caused these presents to be executed by their proper corporate officers and their corporate seals to be affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

By H. E. LEWIS,
Vice-President.

(Corporate seal)

Attest:

A. N. ROBERTS
Assistant Secretary.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION
by

HOWARD COONLEY
Vice-President.

(Corporate seal)

Attest:

C. BRADFORD FRALEY
Asst. Sec.

Approved as to form

Date—6/15/18

WILLIAM H. WHITE, JR.
Legal Division.

Approved:

DANIEL H. COX
Manager Division of
Steel Ship Construction.

Approved:

T. ED. SKEEL
Asst. Comptroller.

EXHIBIT 15.

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

For Construction of Plant and Vessels

Owner's Contract No. 340—S. C.

Owner's Hull Nos. 1985—2004 incl.

Contractor's Hull Nos. 5281—5300 incl.

Dated June 21st, 1918.

CONTRACT made this 21st day of June, 1918, between Bethlehem Shipbuilding Corporation, Limited, a corporation organized under the laws of the State of Delaware, party of the first part (herein called the Superintendent), and United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia, party of the second part, representing the United States of America (herein called the Owner):

Whereas, the Owner is about to acquire certain real estate located at Alameda, near the City of San Francisco, State of California, suitable for a shipyard site; and,

Whereas, the existing war with Germany requires the construction at the earliest possible time of a large number of vessels suitable for the transportation of troops; and,

Whereas, the Superintendent is experienced in the construction of such vessels, and has an organization fully developed and ready to take charge of the building of a shipyard and the construction therein of the troop vessels hereinafter contracted for; and,

Whereas, the Superintendent's existing facilities are sufficient for its present contract needs, but it is nevertheless willing to construct troop ships for the United States when the facilities therefor have been provided by the Owner; and,

Whereas, the Superintendent is willing to supervise and superintend the work necessary in the construction of such a shipyard, without charge therefor to the Owner, over and above the actual cost to the Superintendent.

Now, therefore, in consideration of the premises and the mutual agreements herein, the parties hereto covenant and agree to, and with each other, as follows:

I.

SHIPYARD.

The Superintendent agrees to forthwith proceed with the erection and equipping of the shipbuilding

plant upon the property now owned, or to be acquired, by the Owner at its own expense, located at Alameda, near the City of San Francisco, State of California. The layout of said plant, the design of the buildings and shipways and the construction thereof, the machinery and equipment therefor, shall be generally in accordance with the plans and specifications submitted by the Superintendent and approved by the Owner, or such modifications thereof as the Owner may direct. The shipbuilding plant shall comprise ten (10) shipbuilding ways, and all buildings, equipment and appurtenances necessary for the establishment of a complete shipyard suitable for the construction of the twenty (20) vessels herein provided for in accordance with the plans and specifications for said vessels hereafter referred to. Such shipbuilding plant shall contain, among other things, adequate water supply and a proper fire protection system, and all other necessary equipment and appurtenances.

II.

VESSELS.

The Superintendent shall, as soon as the shipyard is ready, proceed to construct in accordance with the Owner's plans and specifications hereto attached and made a part of this contract under the rules and regulations of the American Bureau of Shipping, twenty (20) steel steam vessels suitable for and equipped to transport troops. Said vessels to be of 20,600 tons displacement, each designed to carry about 3,000 troops with a speed of about 17 knots, and at least 12,000 horse-power. Such vessels to be complete, with propelling machinery, auxiliaries, equipment,

full military requirements, and accommodations for troops, all in accordance with the said drawings and specification.

* * * * * * * *

VI.

ORDERS FOR MATERIALS.

The Owner shall have full control, through its duly authorized representatives, of all orders for materials, machinery, equipment, supplies and other purchases and commitments made under this agreement (including establishment of extensions, increases, and additions to plants and property), and all contracts and orders placed by the Superintendent shall be in the name of the Owner by the Superintendent, and shall be first approved in writing by the Owner, and it is understood that the Superintendent shall assume no pecuniary liability under or by reason of such obligation where made with the written approval of the Owner.

The materials and parts to be used in the construction of these vessels shall be ordered by the Superintendent, which will receive the same and make payment from the funds deposited by the Owner, as provided for in Article XVIII, direct to the individual, firm or corporation with whom the order has been placed at the price stipulated in the order and in accordance with such terms of payment as may be arranged by the Superintendent with such individual, firm or corporation. The amounts so paid for the material and parts will enter into the actual cost of the plant and vessels, as hereinafter provided for. Such materials and parts shall be of the quality and characteristics best adapted to the

various purposes for which they may be used, and shall conform to the requirements and specifications of the American Bureau of Shipping. The Superintendent shall supply such assistance as may be required to the American Bureau of Shipping and by the inspectors of the Owner in making any tests and inspections of such material and parts at the shipyard considered necessary by such inspectors or surveyors.

* * * * * * * * *

XIII.

LABOR AND WAGES.

The Superintendent will comply with all instructions not contrary to law as to wages or conditions of employment of labor on this contract given to it in writing by the Owner. If by reason of any such instruction the cost of any vessel hereunder shall be increased or decreased, then the estimated basic cost as hereinafter provided for such vessel shall be increased or decreased by such amount. Such amount shall be agreed upon by the parties, and, if not agreed upon, shall be determined as provided in Article XXIX hereof. The owner will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract.

It is agreed that the wages paid shall be those fixed for the San Francisco district by the Shipbuilding Wage Adjustment Board effective November 4th, 1917, and the increase therein effective February 1st, 1918. In the event that wage scale shall be increased or decreased the estimated basic cost shall be increased or decreased accordingly. Sun-

day, holiday, or overtime work shall not be resorted to, unless directed by the Owner, in which event the estimated basic cost of the vessel or vessels upon which such work has been directed shall be increased accordingly.

* * * * * * * *

XX.

ACTUAL COST OF PLANT.

For the purposes of this contract, it is understood that the cost of the construction of the shipyard shall consist of the following and items similar thereto in principle:

1. The net cost of material, supplies, machinery, tools, equipment and parts thereof, after deducting all discounts, rebates, etc., obtained, entering into or expended in the execution of the work, including freight and other transportation costs.

2. Cost of labor, directly and exclusively engaged in the execution of the work.

3. Cost of all equipment necessary for carrying on the work hereunder, including reasonable rentals paid for equipment which may be rented instead of purchased.

4. The cost of supplies and equipment consumed in the work.

5. The cost at salary rates, of men in the engineering or drafting and accounting departments either in the office or in the field for such time as said men shall actually and exclusively be engaged in the work hereunder. All salaries paid shall be in accordance with those paid for similar work in

the immediate vicinity of said shipyard and shall at all times be subject to adjustment and approval by the Owner.

6. The cost of permits, royalties, testing fees and other similar items of expense incidental to and necessary in the work.

7. Cost of casualty and liability insurance, also fire and other insurance, if any, as the Owner may approve and require.

8. The cost of replacing any part of the work which may be lost or destroyed or partially lost or destroyed which is not compensated by insurance, and the loss of which has not resulted from the wilful fault or gross negligence of the Superintendent.

9. All payments made under orders and contracts approved by the Owner as provided for in Article VI pertaining to the construction and equipment of said shipyard, including payments to architects and builders.

10. It is understood and agreed that parts and portions of the shipyard will be completed or ready for use before others, and that as soon as said parts are so completed or used, a proper part or portion of the overhead expense in connection therewith will be chargeable to the cost of the vessels. The proportion of said overhead to be charged to the shipyard and to the vessels shall be agreed upon by the Superintendent and the Owner, and in the event that they are unable to so agree, same shall be determined as hereinafter provided in Article XXV.

XXI.

ACTUAL COST OF VESSELS.

For the purpose of this contract, actual cost of the construction of the vessels shall consist of the following and items similar thereto in principle:

(a) The net costs, of labor and materials, machinery, equipment, and supplies (after deducting all discounts obtained) furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries and other indirect charges, all as incurred on account of the vessels constructed under this Contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used, in the performance of the work under the contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this

contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XXIX.

(g) The items of cost provided for in sub-divisions (e) and (f) shall not apply to the yard and equipment paid for by the Owner.

* * * * * * * *

XXIV.

SUPERINTENDENT'S COMPENSATION.

The Superintendent is to be paid for its services the sum of Three Hundred Thousand Dollars ($300,000) for each and every vessel constructed and delivered under this contract, and in addition thereto the Superintendent is to receive one-half of any saving realized by economy or otherwise in constructing the vessel, as hereinafter provided. It is hereby agreed that for the purpose of determining the amount, if any, of any saving, there may be in the construction of each of said vessels, the sum of $4,464,000 shall be taken and considered as a basic price for each vessel, subject to increase or decrease as herein provided. In determining whether or not there has been any saving, the actual cost of each of said twenty (20) vessels shall be determined in ac-

cordance with the provisions hereof. If the actual cost so determined of any of said twenty (20) vessels is less than the estimated basic cost thereof revised as aforesaid, then one-half of the difference between said basic cost revised as aforesaid and said actual cost shall be paid to the Superintendent as additional compensation hereunder. Should the actual cost of said vessel equal or exceed the total basic cost thereof revised as aforesaid, the excess, if any, is to be paid by the Owner.

The foregoing provisions of this Article are subject to the condition that the amount that shall be paid to the Superintendent on account of any such saving on any of said twenty (20) vessels shall not exceed $200,000.

In the event that the Shipbuilding Wage Adjustment Board or other lawful authority shall increase or decrease the scale of wages referred to in Article XIII; and in the event of any change in the plans and specifications which shall increase or decrease the cost of the vessels or any of them, the estimated basic cost of the vessel or vessels affected thereby shall be increased or decreased by such an amount as the Vice-President of the Owner shall determine upon, subject to arbitration as provided by Article XXIX.

There shall be paid as a part of the compensation of the Superintendent each month 7½% of the aggregate of the expenditures made for the actual cost of the vessels during the preceding month until the Superintendent shall have been paid ninety per cent. (90%) of its fixed compensation of Three Hundred Thousand Dollars ($300,000) per vessel. The bal

ance, if any, of its compensation of Three Hundred Thousand Dollars ($300,000) per vessel shall be paid upon the completion and acceptance by the Owner of each of said vessels.

In case the Owner shall for any reason cancel this contract and terminate the work hereunder, it shall give to the Superintendent at least sixty (60) days notice thereof, and in that event the Owner shall pay to the Superintendent in addition to cost of the construction of said shipbuilding plant and of the work on the vessels to be constructed hereunder, including the cost of all materials then on hand for such work, five per cent. (5%) of that part of such cost as applies to the construction of said shipbuilding plant and seven and one-half per cent. (7½%) of that part which applies to the construction of said vessels which may then be uncompleted. Compensation for all completed vessels shall be paid as herein provided.

* * * * * * * * *

XXXIII.

PARTICIPATION IN PROFITS:

No member of, or delegate to Congress, nor Resident Commissioner, is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this Article shall not apply to this contract so far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats., 1109).

* * * * * * * * *

In witness whereof the parties have caused these presents to be executed by their proper corporate

officers and their corporate seals to be hereunto affixed and attached on the day and year above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LIMITED

By J. W. POWELL,
Vice-President.

(Corporate Seal)

Attest:

A. N. ROBERTS,
Asst. Secretary.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

By HOWARD COONLEY,
Vice-President.

(Corporate Seal)

Attest:

STEPHEN BOURNE,
Secretary.

Approved as to form

Date—6/21/18

William H. White, Jr.
Legal Division

EXHIBIT 16

CONTRACT

between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

For Construction of Six Troop Ships
at
Sparrow's Point, Maryland.

Owner's Contract No. 465-S. C.
Owner's Hull Nos. 2505-2510
Contractor's Hull Nos. 4195-4200

Dated July 15th, 1918

CONTRACT

CONTRACT made this fifteenth day of July, 1918, between the Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a cor-

poration organized under the laws of the District of Columbia (herein called the Owner) representing the United States of America, party of the second part.

Whereas, the Contractor is the owner of certain real estate situated at Sparrows' Point in the State of Maryland and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau), six (6) troop ships of about ten thousand (10,000) tons dead weight carrying capacity each, complete with propelling machinery, full military requirements, auxiliaries and complete equipment, in accordance with Owner's drawings and specifications hereto attached and made part of this contract.

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of six (6) troopships of about ten thousand (10,000) tons dead weight carrying capacity, in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and

specifications, including duly authorized changes therein. Said vessels shall be provided with equipment, machinery, devices and appliances, military requirements, and appurtenances of every kind, complete in all respects and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on basis set forth in Article XIX.

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor in this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence, and such powers as it may have by law, to assist the Contractor to secure, with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and power to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction so far as they have been inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whosoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of construction of the vessels herein contracted for shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work of constructing said vessels, to provide for payments to be made for materials, and for wages and salaries of persons employed upon said work. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this Contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without

the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profits shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs, and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such a manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of

bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

* * * * * * * *

XIX.

PRICE.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms

of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus, the definite sum for profit hereinafter in this Article provided for, based upon an estimated base co[illegible] to the Contractor, at the wage schedule as adopted by the Shipbuilding Labor Adjustment Board, and in force on January 3, 1918, at the Navy Yard of the United States, Norfolk, Virginia, and material schedules and freight rates attached hereto and forming part of this contract, see Exhibit "A," of Four million one hundred and sixty thousand dollars ($4,160,000) for each of said vessels. Should the rate of wages actually paid by the Contractor be increased or decreased, by the direction of or with the approval of the Owner, from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost from those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessels. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any vessel in the execution of the work reach or exceed the sum of Four million one hundred and sixty thousand dollars ($4,160,000) or such revised estimated cost in lieu thereof in any case as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of Three hundred and twenty thousand dollars ($320,000) for such vessel. Said sum for profit to be increased, on account of increase in cost due to changes from contract plans and specifications, in proportion to the amount that

fixed sum for profit bears to the base cost. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sum for profit of Three hundred and twenty thousand dollars ($320,000) one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

The foregoing provisions of this Article are subject to the condition that the amount that shall be paid to the Contractor on account of any such saving on any of said six (6) vessels shall not exceed Two hundred thousand dollars ($200,000). Said fixed sums for profit of Three hundred and twenty thousand dollars ($320,000) shall be paid as follows:

PROFITS WHEN PAYABLE.

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent. (10%) thereof as part payment on account of said profit, such payments of said ten per cent. (10%) to be continued until ninety per cent. (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter, further payments on account of said fixed sums for profit shall not be required until the vessel in respect of which such sums shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said

fixed sums for profit and any additional profit over and above said sums of Three hundred and twenty thousand dollars ($320,000), determined as hereinbefore provided, shall become immediately due and payable.

* * * * * * * *

XXII.

NOTICES AND PAYMENTS.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at 140 North Broad St., Philadelphia, Pa., or be delivered personally to an executive or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the Bethlehem Shipbuilding Corporation, Ltd., Bethlehem, Penna., and a copy to it at Sparrow's Point, Maryland, or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the contractor by mail at Bethlehem, Penna.

* * * * * * * *

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may

arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

* * * * * * * * *

In witness whereof the parties hereto have caused these presents to be executed by their proper corporate officers and their corporate seals to be affixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

J. W. POWELL
Vice-President.

(Corporate seal)

Attest:

A. N. ROBERTS
Assistant Secretary.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

CHARLES PIEZ
Vice President.

(Corporate seal)

Attest:

WAYNE V. O'NEIL
Assistant Secretary.

Approved

CUTHELL

Approved
8/31/18

A. V. Bamillon
Act'g. Manager, Contract Division.

Approved
9/19/18

Daniel H. Cox
A. B. N. Manager Divison of
Steel Ship Construction.

Approved

D. H. Bender.

EXHIBIT 19.

CONTRACT

BETWEEN

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

AND

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

FOR

Six (6) Twelve Thousand (12,000) H. P. Curtis Marine Propelling Equipment with Falk Gears, Complete with Spares and Accessories
Turbines to be constructed at Fore River Plant, Quincy, Mass.
Gears to be constructed by Falk Company, Milwaukee, Wis.

Owner's Contract No. 4989

Contractor's Manufacturing Order No. FS-1509

Dated September 30, 1919

CONTRACT, made this day 30th of September, 1919, between the Bethlehem Shipbuilding Corporation, Ltd., a Corporation organized under the law of the State of Delaware, party of the first part (herein called the Contractor), and the United States

Shipping Board Emergency Fleet Corporation, a Corporation organized under the laws of the District of Columbia, herein called the Owner, acting for and on behalf of America (herein called United States, party of the second part), for valuable considerations, the receipt of which is hereby acknowledged by both parties, and in consideration of the mutual agreement of the parties, it is agreed as follows:

I.

WORK TO BE DONE.

1. The Contractor shall construct or cause to be constructed at its own risk and expense in accordance with its own drawings (subject to prior approval by the Owner, and after such approval to become a part of this contract), and in accordance with specifications attached hereto, and made a part of this contract, under the rules and regulations of the American Bureau of Shippinig, so far as such rulings are applicable, six (6) twelve thousand (12,000) H. P. Curtis Marine Propelling Equipment with Falk gears, and complete with spares and accessories, all to be in accordance with the said specifications. For the purpose of this contract, a "unit" shall be understood to consist of one (1) high pressure turbine, one (1) low pressure and astern turbine, and one (1) reduction gear, all complete with valves, piping, etc. covered by this contract, and be of 6000 S. H. P. An "equipment shall be understood to consist of two (2) "units" of 12000 S. H. P."

DELIVERIES.

2. The Contractor shall deliver the said turbines f. o. b. cars Fore River, Mass., and shall deliver the

gears f. o. b. cars Milwaukee, Wisconsin, in accordance with the following schedule:

One (1) 12,000 H. P. Equipment on or before March 15, 1920.

One (1) 12,000 H. P. Equipment on or before April 10, 1920.

One (1) 12,000 H. P. Equipment on or before May 5, 1920.

One (1) 12,000 H. P. Equipment on or before June 1st, 1920.

One (1) 12,000 H. P. Equipment on or before June 25th, 1920.

One (1) 12,000 H. P. Equipment on or before July 20th, 1920.

* * * * * * * * *

II.

PAYMENTS.

1. In consideration of the performance by the Contractor of the obligations under this contract, the Owner agrees to pay therefor a lump sum purchase price of one million, six hundred sixty-one thousand, six hundred and seventy ($1,661,670) Dollars for all of the six (6) equipments contracted for herein, and forty thousand, six hundred and fifty ($40,650) Dollars for all of the six (6) sets of spares accompanying the turbine equipments delivered complete f. o. b. cars as set forth in Section 2 of Article I, or one million, seven hundred and two thousand, three hundred and twenty ($1,702,320) Dollars for the six (6) turbine equipments complete with spares.

2. The contract price above provided for is to be paid to the Contractor in the following manner:

(a) Twenty percent (20%) of the pro-rated price of the turbines included in an equipment when main castings and forgings for the turbines in each equipment (as per list to be furnished by the Bethlehem Shipbuilding Corporation) are received in Contractor's shop ready for machining.

(b) Twenty percent (20%) of the pro-rated price of the turbines included in an equipment when all parts for turbines of each equipment are assembled and the turbines placed on the testing blocks ready for test.

(c) Twenty percent (20%) of the pro-rated price of the reduction gears included in an equipment upon completion and shipment of the gears in each equipment.

(d) Thirty percent (30%) of the pro-rated price of the turbines, accessories, and spares, included in each equipment upon shipment or storage of the turbines, accessories, and spares of each equipment.

(e) The balance of ten percent (10%) of the pro-rated price of each equipment, including accessories and spares, within thirty (30) days after shipment or storage of each complete equipment, including accessories and spares.

* * * * * * * * *

XII.

MEMBER OF CONGRESS NOT TO BENEFIT.

No member of or Delegate to Congress, nor Resident Commissioner, is or shall be admitted to any

share or part of this contract, or to any benefit that may arise therefrom; but this article shall not apply to any contract within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats., 1109).

XIII.

CHECKS.

Payment hereunder shall be made by the Owner by check addressed to the Contractor by mail at Bethlehem, Penna.

In witness whereof, the parties hereto have caused this contract to be signed by their respective officers and their corporate seals to be hereunto affixed, duly attested, on the day above stated, in triplicate.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

By J. W. POWELL,
Vice-President.

(Corporate seal)

Attest:

R. B. McMATH,
Secretary.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

By J. L. ACKERSON,
Vice-President.

(Corporate Seal)

Attest:

A. W. COOPER,
Asst. Secretary.

Approved as to form

WATSON H. MAGILL
Assistant Counsel

Approved

Supply & Sales Division
G. H. S. ROLLASON
Mgr.

Approved

ALEX MURDOCK
Vice Chairman, Cancellations,
Claims and Contracts Board

Approved

A. C. WILKIE
Acting Manager Ship
Construction Division,
by A. CONTI

W. H. E.
C. J. W. (?)

IN THE
DISTRICT COURT OF THE UNITED STATES
For the Eastern District of Pennsylvania

No. 11970. December Sessions, 1925

Bethlehem Shipbuilding Corporation, Ltd., Plaintiff,
v.
United States Shipping Board Emergency Fleet Corporation, Defendant

AFFIDAVIT OF DEFENSE WITH SET-OFF AND COUNTERCLAIM

(Filed January 10, 1927)

United States of America,
District of Columbia,
City of Washington, ss:

J. Harry Philbin, being duly sworn according to law, deposes and says that he is the vice president of the United States Shipping Board Emergency Fleet Corporation, the defendant in the above entitled action; that he is duly authorized to make this affidavit on its behalf, and that said corporation has a full, just, true and legal defense to the whole of plaintiff's claim of the following nature and character, to wit:

First. Defendant denies that any sum whatsoever is due or owing to the plaintiff.

DEFENSE TO THE FIRST CAUSE OF ACTION
(Contract 177 S. C.)

Second. In answer to Paragraph Second of the Statement of Claim, defendant avers that on or

shortly after the 5th day of January, 1918 (and alleges that the actual date was February 1st, 1918), plaintiff and defendant made and entered into the contract in writing dated December 31st, 1917, referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were constructed for said principal, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-off and Counterclaim.

Third. In answer to Paragraph Third of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself but defendant denies that the same is legally binding on defendant, or its principal, for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-off and Counterclaim.

Fourth. In answer to Paragraph Fourth of the Statement of Claim, defendant avers that Article XXVIII of said contract and plaintiff's Exhibits 1-B and 1-C speak for themselves, but defendant denies that the same are legally binding on defendant for the reasons more particularly set forth hereafter in Paragraphs Thirty-eighth to Forty-first of the defendant's Set-off and Counterclaim.

Fifth. In answer to Paragraph Fifth of the Statement of Claim, defendant avers that it took possession of and accepted said vessels upon behalf of its said principal, the United States of America, all of which was well known to the plaintiff, but the defendant denies that the plaintiff duly performed

all the terms and conditions of the said contracts so far as said contracts relate to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

Sixth. In answer to Paragraph Sixth of the Statement of Claim, the defendant denies that the increase in the labor cost resulting from wage increases amounted to $2,508,502.11 and avers that the total increase in the labor cost resulting from wage increases authorized by it amounted to $1,782,136.31, and no more.

Seventh. Admitted.

Eighth. In answer to Paragraph Eighth of the Statement of Claim, defendant denies that the revised estimated cost of said vessels revised in accordance with the provisions of said contract was $28,008,997.39, and defendant avers that said cost so revised was $27,282,631.59, and no more, made up as follows:

Estimated cost	$25,440,000.00
Costs resulting from wage increases	1,782,136.31
Costs resulting from changes in plans and specifications	60,495.28
Total revised estimated cost	27,282,631.59

Ninth. In answer to Paragraph Ninth of the Statement of Claim, defendant avers that the total cost of the special improvements, tools, and equipment there referred to, was $1,550,000.00. The defendant avers that of this sum, the defendant paid the plaintiff $1,549,848.68 and that the cost of said improvements to the plaintiff was not more than $152.32. In further answer, defendant refers to the averments set forth in Paragraph Fifteenth hereof

and in Paragraphs Ninth to Forty-first of defendant's set-off and counterclaim.

Tenth. In answer to Paragraph Tenth of the Statement of Claim, defendant refers to the averment set forth in Paragraph Fifth hereof.

Eleventh. In answer to Paragraph Eleventh of the Statement of Claim, defendant denies that the total actual cost of said vessels after applying all credits referred to in said paragraph was $22,469,243.85, or any other or greater sum than $22,466,351.20.

Twelfth. In answer to Paragraph Twelfth of the Statement of Claim, defendant denies that the aggregate cost to the plaintiff of the various items there referred to was more than $152.32.

Thirteenth. In answer to Paragraph Thirteenth of the Statement of Claim, defendant admits the first sentence thereof except to deny that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal, the United States of America, as at all times was well known to the plaintiff. Defendant denies that the actual cost of the said vessels was $22,469,243.85 and that the actual cost, when reduced by $53,859.63 was $22,415,384.22. Defendant avers that the actual cost was $22,466,351.20, which when reduced by $53,859.63 is $22,412,491.57 and no more.

Fourteenth. In answer to Paragraph Fourteenth of the Statement of Claim, defendant denies that the amount by which the actual cost of said vessels was less than the revised estimated cost of said vessels was $5,593,613.17 or was any other or greater

sum than $4,870,140.02, and defendant avers that, for the reasons hereinafter stated, the plaintiff was not and is not entitled to receive or retain any part of said sum.

Fifteenth. In answer to Paragraph Fifteenth of the Statement of Claim, defendant denies that the plaintiff is entitled to the said sum of $744,998.36 as stated in Paragraph Fifteenth or any other sum or sums of money from defendant or its principal. The defendant alleges that the defendant, acting in behalf of the United States, has overpaid the plaintiff with funds of the United States at least $2,333,603.03 in excess of the aggregate amount which the said plaintiff was entitled to receive for ship construction under said contracts, made up as follows:

Payments to Plaintiff:		
On account of actual cost of construction	$22,792,960.96	
On account of profit to plaintiff	4,248,242.43	
Total		$27,041,203.39
Credits to Plaintiff:		
Total actual cost of construction	$22,466,351.20	
Profit to plaintiff, not to exceed 10 per cent of $22,412,491.57	2,241,249.16	
Total		24,707,600.36
Overpayment to plaintiff		2,333,603.03

Defendant further avers that acting in behalf of the United States it has paid the plaintiff with

funds of the United States on account of said special improvements, tools and equipment constructed and provided at a total cost of $1,550,000.00 as aforesaid, the sum of $1,549,848.68.

Defendant avers that for reasons more particularly set forth hereafter in Paragraphs Ninth to Forty-first of the defendant's Set-off and Counterclaim, the provisions of said contracts providing for profit to the plaintiff as well as certain provisions of Article XXVIII thereof relating to special improvements, tools, and equipment are invalid and unenforceable and said principal is entitled to recover from plaintiff not only the said overpayment of at least $2,333,603.03 but also the fair and reasonable value of such special improvements, tools and equipment which the defendant avers is $1,549,848.68, making a total sum of $3,883,451.71 due from plaintiff.

Sixteenth. In answer to Paragraph Sixteenth of the Statement of Claim, defendant denies that any sum whatsoever is due or owing to plaintiff by defendant or its said principal, and upon the contrary avers that plaintiff has been largely overpaid in connection with said contracts as already set forth.

In further answer to the plaintiff's first cause of action, defendant refers to the matters set forth hereafter in the Defendant's Set-Off and Counterclaim, and avers that the said contracts were made by defendant upon behalf of its principal, the United States of America, as the plaintiff well knew; that all acts done or performed by defendant in connection therewith were done or performed upon behalf of its said principal, that all payments thereunder were made upon behalf of its said principal, and

with the funds of said principal, and were usually paid to plaintiff by said principal upon checks drawn by defendant upon the Treasurer of the United States, and that said principal is the only party which may properly be sued by plaintiff in connection with the contract in question.

DEFENSE TO THE SECOND CAUSE OF ACTION

(Contract 178 S. C.)

Seventeenth. In answer to Paragraph Seventeenth of the Statement of Claim, defendant admits that on or shortly after the 5th day of January, 1918 (and alleges that the actual date was February 1, 1918), plaintiff and defendant made and entered into the contract in writing, dated December 31st, 1917, referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its said principal, the United States of America, for which said vessels were to be constructed, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth of the defendant's Set-off and Counterclaim.

Eighteenth. In answer to Paragraph Eighteenth of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself but defendant denies that the same is legally binding on the defendant, or its principal, for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-off and Counterclaim.

Nineteenth. In answer to Paragraph Nineteenth of the Statement of Claim, defendant avers that

Article XXVIII of said contract and plaintiff's Exhibit 2-B speak for themselves but defendant denies that the same are legally binding on defendant for the reasons more particularly set forth hereafter in Paragraphs Thirty-eighth to Forty-first of the defendant's Set-off and Counterclaim.

Twentieth. In answer to Paragraph Twentieth of the Statement of Claim, defendant avers that it took possession of and accepted said vessels upon behalf of its principal, the United States of America, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth of the defendant's Set-off and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of the said contracts so far as said contracts relate to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

Twenty-first. In answer to Paragraph Twenty-first of the Statement of Claim, the defendant denies that the increase in labor cost resulting from wage increases amounted to $1,331,183.17, and avers that the total increase in the labor cost resulting from wage increases authorized by it amounted to $5,220.04 and no more.

Twenty-second. Admitted.

Twenty-third. In answer to Paragraph Twenty-third of the Statement of Claim, defendant denies that the revised estimated cost of said vessels revised in accordance with the provisions of said contract is $10,406,142.17, and defendant avers that said cost, revised in so far as said contract can be interpreted, is $9,080,179.04 and no more, made up as follows:

Estimated cost	$8,886.000.00
Costs resulting from wage increases	5,220.04
Costs resulting from changes in plans and specifications	188,959.00
Total revised estimated cost	9,080,179.04

Twenty-fourth. In answer to Paragraph Twenty-fourth of the Statement of Claim, defendant avers that the total cost of the special improvements, tools, and equipment there referred to was $141,000.00. Defendant alleges that of this sum the defendant paid the plaintiff $140,711.02 and that the cost of said improvements to the plaintiff was not more than $288.98. In further answer, defendant refers to the averments set forth in Paragraph Thirtieth hereof and Paragraphs Ninth to Forty-first of defendant's set-off and counter-claim.

Twenty-fifth. In answer to Paragraph Twenty-fifth of the Statement of Claim, defendant refers to the averments set forth in Paragraph Twentieth hereof and further denies that any audit was had of the revised estimated cost as alleged in the complaint.

Twenty-sixth. In answer to Paragraph Twenty-sixth of the Statement of Claim, defendant denies that the total actual cost of said vessels after applying all credits referred in said paragraph was $9,993,375.26, or any other or greater sum than $9,792,015.63.

Twenty-seventh. In answer to Paragraph Twenty-seventh of the Statement of Claim, the defendant denies that the aggregate cost to the plaintiff of the various items there referred to was more than $288.98.

Twenty-eighth. In answer to Paragraph Twenty-eighth of the Statement of Claim, defendant admits the first sentence thereof except to deny that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal, the United States of America, as at all times was well known to the plaintiff. Defendant denies that the actual cost of the said vessels was $9,993,375.26 and that the actual cost, when reduced by $34,452.84 was $9,958,922.42. Defendant avers that the actual cost was $9,792,015.63, which when reduced by $34.452.84 is $9,757,562.79 and no more.

Twenty-Ninth. In answer to Paragraph Twenty-ninth of the Statement of Claim, defendant denies that $447,219.75 or any other amount represents the amount by which the revised base cost of said vessels was less than the actual cost thereof reduced as aforesaid and the defendant avers that the actual cost was in excess of the estimated cost in the amount of $677,383.75.

Thirtieth. In answer to Paragraph Thirtieth of the Statement of Claim, defendant denies that the plaintiff is entitled to said sum of $385,463.87, or any other sum or sums of money from the defendant or its principal. The defendant avers that for all matters done or performed by the plaintiff in connection with the aforesaid contract, including the construction and providing of the special improvements, tools, and equipment referred to in said paragraph, the defendant, acting in behalf of the United States, has overpaid the plaintiff with funds of the United States at least $59,749.35 in excess of the

aggregate amount which the plaintiff was entitled to receive, made up as follows:

Payments to Plaintiff:

On account of actual cost of construction	9,803,700.22	
On account of profit to plaintiff	883,110.02	
On account of plant improvements	140,711.02	
Total		$10,827,521.26

Credits to Plaintiff:

Total actual cost of construction	$9,792,015.63	
Profit to plaintiff not to exceed 10 per cent of $9,757,562.79	975,756.28	
Total		10,767,771.91
Overpayment to plaintiff		59,749.35

Defendant avers that on account of said extensions, tools, equipment, and installations the defendant acting in behalf of the United States, its principal, has paid the plaintiff with funds of the United States the sum of $140,711.02. Defendant avers that for reasons more particularly set forth hereafter in Paragraphs Ninth to Forty-first of the defendant's Set-Off and Counterclaim the provisions of said contract providing for profit to the plaintiff as well as certain provisions of Article XXVIII thereof relating to said special improvements,

tools, and equipment are invalid and unenforceable, and said principal is entitled to a credit from plaintiff for the fair and reasonable value thereof which the defendant avers is $140,711.02, as set forth above.

Thirty-first. In answer to Paragraph Thirty-first of the Statement of Claim, defendant denies that any sum whatsoever is due or owing to the plaintiff by the defendant or its said principal and upon the contrary avers that the plaintiff has been overpaid in connection with said contract the sum of at least $59,749.35 as already set forth.

In further answer to the plaintiff's Second Cause of Action, the defendant refers to the matters set forth hereafter in the defendant's Set-Off and Counterclaim and avers that said contract was made and all acts thereunder were done or performed by defendant in connection therewith and that all payments thereunder were made upon behalf of the defendant's principal, the United States of America; and with the funds of said principal, all of which was well known to the plaintiff and that said principal is the only party which may properly be sued by plaintiff in connection with said contract.

DEFENSE TO THE THIRD CAUSE OF ACTION

(Contract 179 S. C.)

Thirty-second. In answer to Paragraph Thirty-second of the Statement of Claim, defendant admits that on or shortly after the fifth day of January, 1918 (and alleges that the actual date was February 1, 1918), plaintiff and defendant made and entered into a certain contract in writing, dated December

31st, 1917, referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were to be constructed for said principal, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth of defendant's Set-off and Counterclaim.

Thirty-third. In answer to Paragraph Thirty-third of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself, but defendant denies that the same is legally binding on the defendant, or its principal, for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-Off and Counterclaim.

Thirty-fourth. In answer to Paragraph Thirty-fourth of the Statement of Claim, defendant avers that it took possession of and accepted said vessels upon behalf of its said principal, the United States of America, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth of the defendant's Set-Off and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

Thirty-fifth. In answer to Paragraph Thirty-fifth of the Statement of Claim, the defendant denies that the increase in the labor cost resulting from wage increases amounted to $851,436.38 and avers that the total increase in the labor cost resulting

from wage increases authorized by it amounted to $1,069.69 and no more.

Thirty-sixth. Admitted.

Thirty-seventh. In answer to Paragraph Thirty-seventh of the Statement of Claim, defendant denies that the revised estimated cost of said vessels revised in accordance with the provisions of said contract is $7,085,764.38 and defendant avers that said cost, revised in so far as said contract can be interpreted, is $6,235,397.69 and no more, made up as follows:

Estimated cost	$6,210,000.00
Costs resulting from wage increase	1,069.69
Costs resulting from changes in plans and specifications	24,328.00
Total revised estimated cost	6,235,397.69

Thirty-eighth. In answer to Paragraph Thirty-eighth of the Statement of Claim, defendant refers to the averments set forth in Paragraph Thirty-fourth hereof and further denies that any audit was had of the revised estimated cost as alleged in the Complaint.

Thirty-ninth. Admitted.

Fortieth. In answer to Paragraph Fortieth of the Statement of Claim, defendant admits the figures therein contained, but the defendant denies that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal, the United States of America, as at all times was well known to the plaintiff.

Forty-first. In answer to Paragraph Forty-first of the Statement of Claim, defendant denies that the amount by which the actual cost of said vessels was less than the revised estimated cost of said vessels was $1,533,219.31 or was any other or greater sum than $682,852.62, and defendant avers that for the reasons hereinafter stated the plaintiff was not and is not entitled to receive or retain any part of said sum.

Forty-second. In answer to Paragraph Forty-second of the Statement of Claim, defendant denies that the plaintiff is entitled to the said sum of $210,531.21 as stated in Paragraph Forty-second or any other sum or sums of money from defendant or its principal. The defendant avers that the defendant, acting in behalf of the United States, has overpaid the plaintiff, with funds of the United States, at least $600,823.93 in excess of the aggregate amount which the said plaintiff was entitled to receive for ship construction under said contracts, made up as follows:

Payments to plaintiff

On account of actual cost of construction	$5,657,186.58	
On account of profit to plaintiff	1,055,222.27	
Total		6,712,408.85

Credits to Plaintiff

Total actual cost of construction	5,556,330.41

Profit to plaintiff not to exceed 10 per cent of $5,552,543.07	555,254.51	
Total		6,111,584.92
Overpayment to plaintiff		600,823.93

Defendant avers that for reasons hereinafter set forth in said Paragraphs Ninth to Thirty-seventh of the defendant's Set-Off and Counterclaim, the provisions of said contract providing for profit to plaintiff, are invalid and unenforceable, and defendant's said principal is entitled to recover from plaintiff the said overpayment of at least $600,823.93.

Forty-third. In answer to paragraph Forty-third of the Statement of Claim, defendant denies that any sum whatsoever is due or owing by defendant or its principal to the plaintiff, and in further answer refers to the matters set forth in the Defendant's Set-Off and Counterclaim, and states that the contract in question was made and all acts thereunder were done or performed and all payments thereunder were made by defendant upon behalf of its said principal, and with the funds of said principal, all of which was well known to the plaintiff, and that said principal is the only party which may properly be sued by plaintiff in connection with said contract.

DEFENSE TO THE FOURTH CAUSE OF ACTION

(Contract 182 S. C.)

Forty-fourth. In answer to Paragraph Forty-fourth of the Statement of Claim, defendant admits

that on or shortly after the fifth day of January, 1918 (and alleges that the actual date was February 1, 1918), plaintiff and defendant made and entered into a certain contract in writing, dated December 31st, 1917, referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were to be constructed for said principal, all of which was well known to the plaintiff as is more particularly alleged hereafter in Paragraphs Third to Eighth of the defendant's Set-Off and Counterclaim.

Forty-fifth. In answer to Paragraph Forty-fifth of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself, but defendant denies that same is legally binding on the defendant or its principal for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-Off and Counterclaim.

Forty-sixth. In answer to Paragraph Forty-sixth of the Statement of Claim, defendant avers that it took possession of and accepted said vessels upon behalf of its said principal, the United States of America, all of which was well known to the plaintiff as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of Defendant's Set-Off and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

Forty-seventh. In answer to Paragraph Forty-seventh of the Statement of Claim, defendant refers to the averment set forth in Paragraph Forty-sixth hereof.

Forty-eighth. In answer to Paragraph Forty-eighth of the Statement of Claim, defendant denies that the total actual cost of said vessels after applying all credits referred in said paragraph was $11,354,258.26, or any other or greater sum than $11,348,258.26.

Forty-ninth. In answer to Paragraph Forty-ninth of the Statement of Claim, defendant admits the first sentence thereof except to deny that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal, the United States of America, as at all times was well known to the plaintiff. Defendant denies that the actual cost of the said vessels was $11,354,258.26 and that the actual cost, when reduced by $152,598.37 was $11,201,659.89. Defendant avers that the actual cost was $11,348,258.26, which when reduced by $152,598.37 is $11,195,659.89 and no more.

Fiftieth. In answer to Paragraph Fiftieth of the Statement of Claim, defendant denies that the plaintiff is entitled to the said sum of $178,989.03 or any other sum or sums of money from the defendant or its principal and the defendant avers that for all matters done or performed by plaintiff in connection with the contract in question there became due plaintiff a net credit of $172,389.03, and no more, made up as follows:

Credits to Plaintiff

Total actual cost of construction	$11,348,258.26	
Profit to plaintiff equal to 10 per cent of $11,195,659.89	1,119,565.99	
Total		$12,467,824.25

Payments to Plaintiff

On account of actual cost of construction	$11,495,435.22	
On account of profit to plaintiff	800,000.00	
Total		12,295,435.22
Underpayment to plaintiff		172,389.03

Fifty-first. Defendant admits that plaintiff is entitled to a credit in the said amount of $172,389.03 against the balance owing by it to defendant's principal on account of the matters set forth in this Affidavit of Defense and Set-Off and Counterclaim, but avers that for reasons therein referred to, said principal is the only party which may properly be sued by plaintiff in connection with the contract in question.

DEFENSE TO THE FIFTH CAUSE OF ACTION

(Contract 183 S. C.)

Fifty-second. In answer to Paragraph Fifty-second of the Statement of Claim, defendant admits that on or shortly after the 5th day of January,

1918 (and alleges that the actual date was February 1, 1918), plaintiff and defendant made and entered into the contract in writing dated December 31st, 1917, referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were to be constructed for said principal, all of which was well known to plaintiff as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of the defendant's Set-Off and Counterclaim.

Fifty-third. In answer to Paragraph Fifty-third of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself, but defendant denies that the same is legally binding on the defendant for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-Off and Counterclaim.

Fifty-fourth. In answer to Paragraph Fifty-fourth of the Statement of Claim, defendant avers that it took possession of and accepted said vessels upon behalf of its said principal, the United States of America, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-Off and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

Fifty-fifth. In answer to Paragraph Fifty-fifth of the Statement of Claim, the defendant denies that the increase in the labor cost resulting from wage increases amounted to $776,639.20 and avers that the total increase in the labor cost resulting from wage increases authorized by it amounted to nothing.

Fifty-sixth. Admitted.

Fifty-seventh. In answer to Paragraph Fifty-seventh of the Statement of Claim, defendant denies that the revised estimated cost of said vessels revised in accordance with the provisions of said contract is $6,358,848.20, and defendant avers that said cost, revised in so far as said contract can be interpreted, is $5,582,209.00, and no more, made up as follows:

Estimated cost	$5,595,000.00
Costs resulting from wages increases	None.
Savings in cost affected by changes in plans and specifications	*12,791.00*
Total revised estimated cost	5,582,209.00

Fifty-Eighth. In answer to Paragraph Fifty-eighth of the Statement of Claim, defendant refers to the averments set forth in Paragraph Fifty-fourth hereof and further denies that any audit was had of the revised estimated cost as alleged in the Complaint.

Fifty-ninth. In answer to Paragraph Fifty-ninth of the Statement of Claim, defendant denies that the total actual cost of said vessels, after applying all credits referred in said paragraph was $5,314,448.66, or any other or greater sum than $5,307,830.87.

Sixtieth. In answer to Paragraph Sixtieth of the Statement of Claim, defendant admits the first sentence thereof except to deny that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal, the United States of America, as at all times was well known to the plaintiff. Defendant denies that the actual cost of the said vessels was $5,314,448.66 and that the actual cost, when reduced by $19,965.44 was $5,294,483.22. Defendant avers that the actual cost was $5,307,830.87, which when reduced by $19,965.44 is $5,287,865.43 and no more.

Sixty-first. In answer to Paragraph Sixty-first of the Statement of Claim, defendant denies that the amount by which the actual cost of said vessels was less than the revised estimated cost of said vessels was $1,964,364.98 or was any other or greater sum than $294,343.57, and defendant avers that, for the reasons hereinafter stated, the plaintiff was not and is not entitled to receive or retain any part of said sum.

Sixty-second. In answer to Paragraph Sixty-second of the Statement of Claim, defendant denies that the plaintiff is entitled to said sum of $131,207.09 or any other sum or sums of money from the defendant or its principal. The defendant avers that the defendant, acting in behalf of the United States, has overpaid the plaintiff with funds of the United States at least $433,806.65, in excess of the aggregate amount which the said plaintiff was entitled to receive for ship construction under said contracts, made up as follows:

Payments to Plaintiff:

On account of actual cost of construction	$5,368,867.81	
On account of profit to plaintiff	901,556.25	
Total		$6,270,424.06

Credits to Plaintiff:

Total actual cost of construction	$5,307,830.87	
Profit to plaintiff, not to exceed 10 per cent of $5,287,865.43	528,786.54	
Total		5,836,617.41
Overpayment to plaintiff		433,806.65

Defendant avers that for reasons set forth in said Set-Off and Counterclaim, the provisions of said contract providing for profit to plaintiff, are invalid and unenforceable, and defendant's said principal is entitled to recover from plaintiff the said overpayment of at least $433,806.65.

Sixty-third. In answer to Paragraph Sixty-third of the Statement of Claim, defendant denies that any sum whatsoever is due or owing to plaintiff by defendant or its said principal, and in further answer refers to the matters set forth in the Set-Off and Counterclaim, and states that the contract in question was made and all acts thereunder were done or performed by defendant and all payments thereunder were made upon behalf of its said principal, and with the funds of said principal, all of which

was well known to the plaintiff and said principal is the only party which may properly be sued by plaintiff in connection with said contract.

DEFENSE TO THE SIXTH CAUSE OF ACTION

(Contract 191 S. C.)

Sixty-fourth. In answer to Paragraph Sixty-fourth of the Statement of Claim, defendant admits that on or shortly after the 5th day of January, 1918 (and alleges that the actual date was February 1, 1918), plaintiff and defendant made and entered into the contract in writing dated December 31st, 1917, referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were to be constructed for said principal, all of which was well known to the plaintiff as is more particularly alleged hereafter in Paragraphs Third to Eighth inclusive of defendant's Set-Off and Counterclaim.

Sixty-fifth. In answer to Paragraph Sixty-fifth of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself, but defendant denies that the same is legally binding on defendant for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-Off and Counterclaim.

Sixty-sixth. In answer to Paragraph Sixty-sixth of the Statement of Claim, defendant avers that it took possession of and accepted said vessels upon behalf of its said principal, the United States of America, all of which was well known to the plaintiff

as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-Off and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

Sixty-seventh. In answer to Paragraph Sixty-seventh of the Statement of Claim, the defendant denies that the increase in the labor cost resulting from wage increases amounted to $621,947.17 and avers that the total increase in the labor cost resulting from wage increases authorized by it amounted to $421,549.93 and no more.

Sixty-eighth. Admitted.

Sixty-ninth. In answer to Paragraph Sixty-ninth of the Statement of Claim, defendant denies that the revised estimated cost of said vessels revised in accordance with the provisions of said contract is $9,239,707.69 and defendant avers that said cost so revised is $9,039,310.45 and no more, made up as follows:

Estimated cost	$8,514,000.00
Costs resulting from wage increases	421,549.93
Costs resulting from changes in plans and specifications	103,760.52
Total revised estimated cost	9,039,310.45

Seventieth. In answer to Paragraph Seventieth of the Statement of Claim, defendant refers to the averment set forth in Paragraph Sixty-sixth hereof.

Seventy-first. In answer to Paragraph Seventy-first of the Statement of Claim, defendant denies

that the total actual cost of said vessels, after applying all credits referred in said paragraph, was $6,354,163.53, or any other or greater sum than $6,349,258.11.

Seventy-second. In answer to Paragraph Seventy-second of the Statement of Claim, defendant admits the first sentence thereof except to deny that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal, the United States of America, as at all times was well known to the plaintiff. Defendant denies that the actual cost of the said vessels was $6,354,163.53 and that the actual cost when reduced by $3,869.37 was $6,350,294.16. Defendant avers that the actual cost was $6,349,258.11, which when reduced by $3,869.37 is $6,345,388.74 and no more.

Seventy-third. In answer to Paragraph Seventy-third of the Statement of Claim, defendant denies that the amount by which the actual cost of said vessels was less than the revised estimated cost of said vessels was $2,889,413.53 or was any other or greater sum than $2,693,921.71, and defendant avers that, for the reasons hereinafter stated, the plaintiff was not and is not entitled to receive or retain any part of said sum.

Seventy-fourth. In answer to Paragraph Seventy-fourth of the Statement of Claim, defendant denies that the plaintiff is entitled to the said sum of $378,269.18 or any other sum or sums of money from defendant or its said principal. The defendant alleges that the defendant, acting in behalf of the United States, has overpaid the plaintiff with funds of the

United States at least $1,288,204.13 in excess of the aggregate amount which the said plaintiff was entitled to receive for ship construction under said contract, made up as follows:

Payments to Plaintiff:

On account of actual cost of construction	$6,405,741.11	
On account of profit to plaintiff	1,866,260.00	
Total		$8,272,001.11

Credits to Plaintiff:

Total actual cost of construction	$6,349,258.11	
Profit to plaintiff, not to exceed 10 per cent of $6,345,388.74	634,538.87	
Total		6,983,796.98
Overpayment to plaintiff		1,288,204.13

Defendant avers that for reasons set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-Off and Counterclaim, the provisions of said contracts providing for profit to plaintiff are invalid and unenforceable, and defendant's said principal is entitled to recover from plaintiff the said overpayment of at least $1,288,204.13.

Seventy-fifth. In answer to Paragraph Seventy-fifth of the Statement of Claim, defendant denies that any sum whatsoever is due or owing to plaintiff by defendant but on the contrary avers that the plaintiff has been largely overpaid is connection

with said contract as already set forth and in further answer refers to the matters set forth hereafter in the defendant's Set-Off and Counterclaim, and states that the contract in question was made and all acts thereunder were done or performed by defendant upon behalf of its said principal, as the plaintiff well knew, and the said principal is the only party which may properly be sued in connection with said contract.

DEFENSE TO THE SEVENTH CAUSE OF ACTION

(Contract 196 S. C.)

Seventy-sixth. In answer to Paragraph Seventy-sixth of the Statement of Claim, defendant admits that on or shortly after the fifth day of January, 1918 (and alleges that actual date was February 1, 1918), plaintiff and defendant made and entered into a certain contract in writing, dated December 31st, 1917, referred to in said paragraph. Defendant denies that said vessel was to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessel was constructed for said principal, all of which was well known to the plaintiff, as is more particularly alleged hereafter, in Paragraphs Third to Eighth, inclusive, of the defendant's Set-Off and Counterclaim.

Seventy-seventh. In answer to Paragraph Seventy-seventh of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself, but defendant denies that the same is legally binding on the defendant for the reasons more particularly set forth hereafter in Paragraphs Ninth

to Thirty-seventh of the defendant's Set-Off and Counterclaim.

Seventy-eighth. In answer to Paragraph Seventy-eighth of the Statement of Claim, defendant avers that it took possession of and accepted said vessel upon behalf of its said principal, the United States of America, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-Off and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to the plaintiff's keeping full and accurate accounts of the cost of construction of said ship.

Seventy-ninth. In answer to Paragraph Seventy-ninth of the Statement of Claim, the defendant denies that the increase in the labor cost resulting from wage increases amounted to $132,318.73 and avers that the total increase in the labor cost resulting from wage increases authorized by it amounted to $317.50 and no more.

Eightieth. Admitted.

Eighty-first. In answer to Paragraph Eighty-first of the Statement of Claim, defendant denies that the revised estimated cost of said vessel revised in accordance with the provisions of said contract is $1,433,258.84 and defendant avers that said cost, revised in so far as said contract can be interpreted, is $1,301,257.61 and no more, made up as follows:

Estimated cost	$1,295,000.00
Costs resulting from wage increases	317.50

Cost resulting from changes in plans and specifications	5,940.11
Total revised estimated cost	1,301,257.61

Eighty-second. In answer to Paragraph Eighty-second of the Statement of Claim, defendant refers to the averments set forth in Paragraph Seventy-eighth hereof, and further denies that any audit was had of the revised estimated cost as alleged in the Complaint.

Eighty-third. Admitted.

Eighty-fourth. In answer to Paragraph Eighty-fourth of the Statement of Claim, defendant denies that the amount by which the actual cost of said vessel was less than the revised estimated cost of said vessel was $309,476.76 or was any other or greater sum than $177,475.53, and defendant avers that for the reasons hereinafter stated the plaintiff was not and is not entitled to receive or retain any part of said sum.

Eighty-fifth. In answer to Paragraph Eighty-fifth of the Statement of Claim, defendant denies that the plaintiff is entitled to said sum of $37,140.46 or any other sum or sums of money from the defendant or its principal. The defendant avers that the defendant, acting in behalf of the United States, has overpaid the plaintiff with funds of the United States, at least $134,719.71 in excess of the aggregate amount which the said plaintiff was entitled to receive for ship construction under said contract, made up as follows:

Payments to Plaintiff:

On account of actual cost of construction	$1,142,822.60

On account of profit to plaintiff	228,057.40	
Total		$1,370,880.00

Credits to Plaintiff:

Total actual cost of construction	$1,123,782.08	
Profit to plaintiff, not to exceed 10 per cent of $1,123,782.08	112,378.21	
Total		1,236,160.29
Overpayment to plaintiff		134,719.71

Defendant avers that for reasons hereinafter set forth in said Set-Off and Counterclaim, the provisions of said contract providing for profit to plaintiff, are invalid and unenforceable and defendant's said principal is entitled to recover from plaintiff the said overpayment of at least $134,719.71.

Eighty-sixth. In answer to Paragraph Eighty-sixth of the Statement of Claim, defendant denies that any sum whatsoever is due or owing to plaintiff by defendant but on the contrary avers that the plaintiff has been largely overpaid in connection with said contract as already set forth and in further answer refers to the matters set forth hereafter in defendant's Set-Off and Counterclaim, and states that the contract in question was made and all acts thereunder were done or performed by defendant upon behalf of its said principal, as the plaintiff well knew, and the said principal is the only party which may properly be sued in connection with said contract.

DEFENSE TO THE EIGHTH CAUSE OF ACTION

(Contract 226 S. C.)

Eighty-Seventh. In answer to Paragraph Eighty-seventh of the Statement of Claim, defendant admits that on or about the 18th day of March, 1918 (and alleges that the actual date was May 1, 1918), plaintiff and defendant made and entered into the contract in writing referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were constructed for said principal, all of which was well known to the plaintiff as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-Off and Counterclaim.

Eighty-eighth. In answer to Paragraph Eighty-eighth of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself, but defendant denies that the same is legally binding on the defendant or its principal for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-Off and Counterclaim.

Eighty-ninth. In answer to Paragraph Eighty-ninth of the Statement of Claim, defendant avers that it took possession of said vessels upon behalf of its said principal, the United States of America, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-Off and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to

the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

Ninetieth. In answer to Paragraph Ninetieth of the Statement of Claim, the defendant denies that the increase in the labor cost resulting from wage increases amounted to $1,969,148.85, and avers that the total increase in the labor cost resulting from wage increases authorized by it amounted to $2,080.61, and no more.

Ninety-first. Admitted.

Ninety-second. In answer to Paragraph Ninety-second of the Statement of Claim, defendant denies that the revised estimated cost of said vessels revised in accordance with the provisions of said contract is $13,978,550.85, and defendant avers that said cost, revised in so far as said contract can be interpreted, is $12,011,482.61, and no more, made up as follows:

Estimated cost	$11,885,000.00
Costs resulting from wage increases	2,080.61
Costs resulting from changes in plans and specifications	124,402.00
Total revised estimated cost	12,011,482.61

Ninety-third. In answer to Paragraph Ninety-third of the Statement of Claim, defendant refers to the averments set forth in Paragraph Eighty-ninth hereof and further denies that any audit was had of the revised estimated cost as alleged in the Complaint.

Ninety-fourth. Admitted.

Ninety-fifth. In answer to Paragraph Ninety-fifth of the Statement of Claim, defendant admits

the figures therein contained, but the defendant denies that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal, the United States of America, as at all times was well known to the plaintiff.

Ninety-sixth. In answer to Paragraph Ninety-sixth of the Statement of Claim, defendant denies that the amount by which the actual cost of said vessels was less than the revised estimated cost of said vessels was $3,087,121.80 or was any other or greater sum than $1,120,053.56, and defendant avers that, for the reasons hereinafter stated, the plaintiff was not and is not entitled to receive or retain any part of said sum.

Ninety-seventh. In answer to Paragraph Ninety-seventh of the Statement of Claim, defendant denies that the plaintiff is entitled to the said sum of $578,702.35, as alleged, or any other sum or sums of money from defendant or its principal. The Defendant avers that the defendant, acting in behalf of the United States, has overpaid the plaintiff with funds of the United States at least $1,050,715.64 in excess of the aggregate amount which the said plaintiff was entitled to receive for ship construction under said contract, made up as follows:

Payments to plaintiff:

On account of actual cost of construction	$11,149,326.76	
On account of profit to plaintiff	1,895,079.61	
Total		$13,044,406.37

Credit to plaintiff:

Total actual cost of construction	$10,904,547.82	
Profit to plaintiff not to exceed 10 per cent of $10,891,429.05	1,089,142.91	
Total		11,993,690.73
Overpayment to plaintiff		1,050,715.64

Defendant avers that for reasons hereinafter set forth in said Set-off and Counterclaim, the provisions of said contract providing for profit to plaintiff are invalid and unenforceable and defendant's said principal is entitled to recover from plaintiff the said overpayment of at least $1,050,715.64.

Ninety-eighth. In answer to Paragraph Ninety-eighth of the Statement of Claim, defendant denies that any sum whatsoever is due or owing to plaintiff by defendant and on the contrary avers that the plaintiff has been largely overpaid in connection with said contract, as already set forth, and in further answer refers to the matters set forth in the Set-off and Counterclaim, and states that the contract in question was made and all acts thereunder were done or performed by defendant upon behalf of its said principal, as the plaintiff well knew, and the said principal is the only party which may properly be sued in connection with said contract.

DEFENSE TO THE NINTH CAUSE OF ACTION.

(Contract 230 S. C.)

Ninety-ninth. In answer to Paragraph Ninety-ninth of the Statement of Claim, defendant admits that on or about the 22d day of April, 1918, plaintiff and defendant made and entered into the contract in writing referred to in said paragraph. Defendant denies that said vessels were constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were constructed for said principal, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-off and Counterclaim.

One Hundredth. In answer to Paragraph One Hundredth of the Statement of Claim, defendant avers that Article XIX of said contracts speaks for itself, but defendant denies that the same is legally binding on the defendant or its principal for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-off and Counterclaim.

One Hundred and First. In answer to Paragraph One Hundred and First of the Statement of Claim, defendant avers that it took possession of and accepted said vessels upon behalf of its said principal, the United States of America, all of which was well known to the plaintiff as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-off and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to the plaintiff's

keeping full and accurate accounts of the cost of construction of said ships.

One Hundred and Second. In answer to Paragraph One Hundred and Second of the Statement of Claim, the defendant denies that the increase in the labor cost resulting from wage increases amounted to $336,221.90, and avers that the total increase in the labor cost resulting from wage increases authorized by it amounted to $238,703.72, and no more.

One Hundred and Third: Admitted.

One Hundred and Fourth. In answer to Paragraph One Hundred and Fourth of the Statement of Claim, defendant denies that the revised estimated cost of said vessels revised in accordance with the provisions of said contract is $4,503,826.10, and defendant avers that said cost, revised in so far as said contract can be interpreted, is $4,406,307.92, and no more, made up as follows:

Estimated cost	$4,150,000.00
Costs resulting from wage increases	238,703.72
Costs resulting from changes in plans and specifications	17,604.20
Total revised estimated cost	4,406,307.92

One Hundred and Fifth. In answer to Paragraph One Hundred and Fifth of the Statement of Claim, defendant refers to the averment set forth in Paragraph One Hundred and First hereof.

One Hundred and Sixth. In answer to Paragraph One Hundred and Sixth of the Statement of Claim,

defendant denies that the total actual cost of said vessels after applying all credits referred to in said paragraph was $3,219,617.30, or any other or greater sum than $3,218,669.91.

One Hundred and Seventh. In answer to Paragraph One Hundred and Seventh of the Statement of Claim, defendant admits the first sentence thereof except to deny that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal, the United States of America, as at all times was well known to the plaintiff. Defendant denies that the actual cost of the said vessels was $3,219,617.30 and that the actual cost, when reduced by $26,433.82 was $3,193,183.48. Defendant avers that the actual cost was $3,218,669.91, which when reduced by $26,433.82 is $3,192,236.09 and no more.

One Hundred and Eighth. In answer to Paragraph One Hundred and Eighth of the Statement of Claim, defendant denies that the amount by which the actual cost of said vessels was less than the revised estimated cost of said vessels was $1,310,642.62 or was any other or greater sum than $1,214,071.83, and defendant avers that, for the reasons hereinafter stated, the plaintiff was not and is not entitled to receive or retain any part of said sum.

One Hundred and Ninth. In answer to Paragraph One Hundred and Ninth of the Statement of Claim, defendant denies that the plaintiff is entitled to the said sum of $212,711.13 as alleged, or any other sum or sums of money from defendant or its principal. The defendant alleges that the defendant,

acting in behalf of the United States has overpaid the plaintiff with funds of the United States at least $539,333.96 in excess of the aggregate amount which the plaintiff was entitled to receive for ship construction under said contract, made up as follows:

Payments to Plaintiff:		
On account of actual cost of construction	$3,248,727.48	
On account of profit to plaintiff	828,500.00	
Total		$4,077,227.48
Credits to Plaintiff:		
Total actual cost of construction	3,218,669.91	
Profit to plaintiff not to exceed 10 per cent of $3,192,236.09	319,223.61	
Total		3,537,893.52
Overpayment to plaintiff		539,333.96

Defendant avers, for the reasons hereinafter set forth in said Set-off and Counterclaim, the provisions of said contract providing for profit to plaintiff are invalid and unenforceable, and defendant's said principal is entitled to recover from plaintiff the said overpayment of at least $539,333.96.

One Hundred and Tenth. In answer to Paragraph One Hundred and Tenth of the Statement of Claim, defendant denies that any sum whatsoever is due or

owing to plaintiff by defendant and upon the contrary avers that the plaintiff has been largely overpaid in connection with said contract as already set forth and in further answer refers to the matters set forth in the Set-off and Counterclaim, and states that the contract in question was made and all acts thereunder were done or performed by defendant upon behalf of its said principal, as was well known to the plaintiff which is the only party which may properly be sued in connection with said contract.

DEFENSE TO THE TENTH CAUSE OF ACTION

(Contract 299 S. C.)

One Hundred and Eleventh. In answer to Paragraph One Hundred and Eleventh of the Statement of Claim, defendant admits that on or about the 30th day of April, 1918 (and alleges that the actual date was May 27, 1918), the plaintiff and the defendant made and entered into a contract in writing, referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were constructed for said principal, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraph Third to Eighth inclusive of defendant's Set-off and Counterclaim.

One Hundred and Twelfth. In answer to Paragraph One Hundred and Twelfth of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself but defendant denies that the same is legally binding on the defendant or its

principal for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-off and Counterclaim.

One Hundred and Thirteenth. In answer to Paragraph One Hundred and Thirteenth of the Statement of Claim, defendant avers that it took possession of and accepted said vessels upon behalf of its said principal, the United States of America, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-off and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

One Hundred and Fourteenth. In answer to Paragraph One Hundred and Fourteenth of the Statement of Claim, the defendant denies that the increase in the labor cost resulting from wage increases amounted to $635,349.36, and avers that the total increase in the labor cost resulting from wage increases authorized by it amounted to nothing.

One Hundred and Fifteenth. Admitted.

One Hundred and Sixteenth. In answer to Paragraph One Hundred and Sixteenth of the Statement of Claim, defendant denies that the revised estimated cost of said vessels revised in accordance with the provisions of said contract is $6,174,768.36, and defendant avers that said cost, revised in so far as said contract can be interpreted, is $5,539,419.00 and no more, made up as follows:

Estimated cost	$5,550,000.00
Costs resulting from wage increases	None
Conceded net deduction from changes in plans and specifications	*10,581.00*
Total revised estimated cost	5,539,419.00

One Hundred and Seventeenth. In answer to Paragraph One Hundred and Seventeenth of the Statement of Claim, defendant refers to the averments set forth in Paragraph One Hundred and Thirteenth hereof and further denies that any audit was had of the revised estimated cost as alleged in the Complaint.

One Hundred and Eighteenth. In answer to Paragraph One Hundred and Eighteenth of the Statement of Claim, defendant denies that the total actual cost of said vessels after applying all credits referred to in said paragraph was $4,873,957.46, or any other or greater sum than $4,867,111.57.

One Hundred and Nineteenth. In answer to Paragraph One Hundred and Nineteenth of the Statement of Claim, defendant admits the first sentence thereof except to deny that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal the United States of America, as at all times was well known to the plaintiff. Defendant denies that the actual cost of the said vessels was $4,873,957.46, and that the actual cost, when reduced by $18,516.22, was $4,855,441.24. Defendant avers that the actual cost was $4,867,111.57, which, when reduced by $18,516.22, is $4,848,595.35, and no more.

One Hundred and Twentieth. In answer to Paragraph One Hundred and Twentieth of the Statement of Claim, defendant denies that the amount by which the actual cost of said vessels was less than the revised estimated cost of said vessels was $1,319,327.12 or was any other or greater sum than $690,823.65, and defendant avers that, for the reasons hereinafter stated, the plaintiff was not and is not entitled to receive or retain any part of said sum.

One Hundred and Twenty-first. In answer to Paragraph One Hundred and Twenty-first of the Statement of Claim, defendant denies that the plaintiff is entitled to the said sum of $212,668.06 as alleged or any other sum or sums of money from the defendant or its principal. The defendant avers that the defendant, acting in behalf of the United States, has overpaid the plaintiff with funds of the United States, at least $523,981.85 in excess of the aggregate amount which the said plaintiff was entitled to receive for ship construction under said contract, made up as follows:

Payments to Plaintiff:

On account of actual cost of construction	$4,897,050.21	
On account of profit to plaintiff	978,902.75	
Total		$5,875,952.96

Credits to Plaintiff:

Cost of construction	4,867,111.57
Profit to plaintiff, not to	

exceed 10 per cent of $4,848,595.35	484,859.54
Total	5,351,971.11
Overpayment to plaintiff	523,981.85

Making a total overpayment to plaintiff of at least $523,981.85 on account of said contract.

Defendant avers that for reasons set forth in Set-off and Counterclaim, the provisions of said contract providing for profit to plaintiff are invalid and unenforceable, and defendant's said principal is entitled to recover from plaintiff the said overpayment of at least $523,981.85.

One Hundred and Twenty-second. In answer to Paragraph One Hundred and Twenty-second of the Statement of Claim, defendant denies that any sum whatsoever is due or owing to plaintiff by defendant and on the contrary avers that the plaintiff has been largely overpaid in connection with said contracts as already set forth and in further answer refers to the matters set forth in the Set-off and Counterclaim, and states that the contract in question was made and all acts thereunder were done or performed by defendant upon behalf of its said principal, as the plaintiff well knew and said principal is the only party which may properly be sued in connection with said contract.

DEFENSE TO THE ELEVENTH CAUSE OF ACTION

(Contract 300 S. C.)

One Hundred and Twenty-third. In answer to Paragraph One Hundred and Twenty-third of the

Statement of Claim, defendant admits that on or about the 30th day of April, 1918 (and alleges that the actual date was May 27, 1918), the plaintiff and the defendant made and entered into the contract in writing referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were constructed for said principal, all of which was well known to the plaintiff as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-off and Counterclaim.

One Hundred and Twenty-fourth. In answer to Paragraph One Hundred and Twenty-fourth of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself but defendant denies that the same is legally binding on the defendant or its principal for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-off and Counterclaim.

One Hundred and Twenty-fifth. In answer to Paragraph One Hundred and Twenty-fifth of said Statement of Claim, defendant avers that it took possession of and accepted said vessels upon behalf of its said principal, the United States of America, all of which was well known to the plaintiff as is more particularly alleged hereafter in Paragraphs Third to Eighth inclusive of defendant's Set-off and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

One Hundred and Twenty-sixth. In answer to Paragraph One Hundred and Twenty-sixth of the Statement of Claim the defendant denies that the increase in the labor cost resulting from wage increases amounted to $899,911.67 and avers that the total increase in the labor cost resulting from wage increases authorized by it amounted to $560.86 and no more,

One Hundred and Twenty-seventh. Admitted.

One Hundred and Twenty-eighth. In answer to Paragraph One Hundred and Twenty-eighth of the Statement of Claim defendant denies that the revised estimated cost of said vessels revised in accordance with the provisions of said contract is $6,940,950.67 and defendant avers that said cost, revised in so far as said contract can be interpreted, is $6,041,599.86 and no more, made up as follows:

Estimated cost	$6,000,000.00
Costs resulting from wage increase	560.86
Costs resulting from changes in plans and specifications	41,039.00
Total revised estimated cost	6,041,599.86

One Hundred and Twenty-ninth. In answer to Paragraph One Hundred and Twenty-ninth of the Statement of Claim defendant refers to the averments set forth in Paragraph One Hundred Twenty-fifth hereof and further denies that any audit was had of the revised estimated cost as alleged in the Complaint.

One Hundred and Thirtieth. Admitted.

One Hundred and Thirty-first. In answer to Paragraph One Hundred and Thirty-first of the Statement of Claim defendant admits the figures therein contained but the defendant denies that the materials referred to therein became and remained the property of the defendant; and defendant avers that said materials were at all times the property of defendant's principal, the United States of America, as at all times was well known to the plaintiff.

One Hundred and Thirty-second. In answer to Paragraph One Hundred and Thirty-second of the Statement of Claim defendant denies that the amount by which the actual cost of said vessels was less than the revised estimated cost of said vessels was $1,818,362.80 or was any other or greater sum than $919,011.99, and defendant avers that, for the reasons hereinafter stated, the plaintiff was not and is not entitled to receive or retain any part of said sum.

One Hundred and Thirty-third. In answer to Paragraph One Hundred and Thirty-third of the Statement of Claim, defendant denies that the plaintiff is entitled to the said sum of $260,394.08, as alleged, or any other sum or sums from the defendant or its principal. The defendant avers that the defendant, acting in behalf of the United States, has overpaid the plaintiff with funds of the United States at least $736,528.53 in excess of the aggregate amount which the said plaintiff was entitled to receive for ship construction under said contract, made up as follows:

Payments to Plaintiff:

On account of actual cost of construction	$5,166,180.02

On account of profit to plaintiff	1,207,660.53	
Total		$6,373,840.55
Credits to Plaintiff:		
Total cost of construction	5,125,053.23	
Profit to plaintiff, not to exceed 10 per cent of $5,122,587.87	512,258.79	
Total		5,637,312.02
Overpayment to plaintiff		736,528.53

Defendant avers that for reasons set forth in said Set-off and Counterclaim, the provisions of said contract providing for profit to plaintiff were invalid and unenforceable, and defendant's said principal is entitled to recover from plaintiff the said overpayment of at least $736,528.53.

One Hundred and Thirty-fourth. In answer to Paragraph One Hundred and Thirty-fourth of the Statement of Claim, defendant denies that any sum whatsoever is due or owing to plaintiff by defendant and on the contrary avers that plaintiff has been largely overpaid in connection with said contract as already set forth and in further answer refers to the matters set forth in the Set-off and Counterclaim, and states that the contract in question was made and all acts thereunder were done or performed by defendant upon behalf of its said principal as was well known to the plaintiff and said principal is the only party which may properly be sued in connection with said contract.

DEFENSE TO THE TWELFTH CAUSE OF ACTION

(Contract 301 S. C.)

One Hundred and Thirty-fifth. In answer to Paragraph One Hundred and Thirty-fifth of the Statement of Claim, defendant admits that on or about the 30th day of April, 1918, plaintiff and defendant made and entered into the contract in writing referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were constructed for said principal, all of which was well known to the plaintiff, as is more particularly alleged hereafter, in Paragraphs Third to Eighth, inclusive, of defendant's Set-off and Counterclaim.

One Hundred and Thirty-sixth. In answer to Paragraph One Hundred and Thirty-sixth of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself, but defendant denies that the same is legally binding on the defendant or its principal for the reasons more particularly set forth hereafter in Paragraph Ninth to Thirty-seventh of the defendant's Set-off and Counterclaim.

One Hundred and Thirty-seventh. Admitted.

One Hundred and Thirty-eighth. In answer to Paragraph One Hundred and Thirty-eighth of the Statement of Claim, defendant avers that it took possession of and accepted said vessels upon behalf of its said principal, the United States of America, all of which was well known to the plaintiff as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-off

and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

One Hundred and Thirty-ninth. In answer to Paragraph One Hundred and Thirty-ninth of the Statement of Claim, the defendant denies that the increase in the labor cost resulting from wage increases amounted to $1,531,967.62 and avers that the total increase in the labor cost resulting from wage increases authorized by it amounted to $1,108,914.89 and no more.

One Hundred and Fortieth. Admitted.

One Hundred and Forty-first. In answer to Paragraph One Hundred and Forty-first of the Statement of Claim, defendant denies that the revised estimated cost of said vessels revised in accordance with the provisions of said contract is $20,403,499.65 and defendant avers that said cost so revised is $19,980,446.92 and no more, made up as follows:

Estimated cost thereof specified in Article XIX of said contract	$18,825,000.00
Costs resulting from wage increases	1,108,914.89
Costs resulting from changes in plans and specifications	46,532.03
Total revised estimated cost	19,980,446.92

One Hundred and Forty-second. In answer to Paragraph One Hundred and Forty-second of the Statement of Claim, defendant refers to the averment set forth in Paragraph One Hundred and Thirty-eighth hereof.

One Hundred and Forty-third. In answer to Paragraph One Hundred and Forty-third of the Statement of Claim, defendant denies that the total actual cost of said vessels after applying all credits referred in said paragraph was $15,346,871.73, or any other or greater sum than $15,344,832.08.

One Hundred and Forty-fourth. Admitted.

One Hundred and Forty-fifth. In answer to Paragraph One Hundred and Forty-fifth of the Statement of Claim, defendant admits the first sentence thereof except to deny that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal, the United States of America, as at all times was well known to the plaintiff. Defendant denies that the actual cost of the said vessels was $15,346,871.73 and that the actual cost, when reduced by $70,363.39 was $15,276,508.34. Defendant avers that the actual cost was $15,344,832.08, which when reduced by $70,363.39 is $15,274,468.69, and no more.

One Hundred and Forty-sixth. In answer to Paragraph One Hundred and Forty-sixth of the Statement of Claim, defendant denies that the amount by which the actual cost of said vessels was less than the revised estimated cost of said vessels was $5,126,991.31, or was any other or greater sum than $4,705,978.23, and defendant avers that, for the reasons hereinafter stated, the plaintiff was not and is not entitled to receive or retain any part of said sum.

One Hundred and Forty-seventh. In answer to Paragraph One Hundred and Forty-seventh of the

Statement of Claim defendant denies that the plaintiff is entitled to the said sum of $922,140.56 as alleged or any other sum or sums of money from the defendant or its principal. The defendant avers that the defendant, acting in behalf of the United States, has overpaid the plaintiff with funds of the United States, at least $1,998,447.87 in excess of the aggregate amount which the said plaintiff was entitled to receive for ship construction under said contract, made up as follows:

Payments to plaintiff:

On account of actual cost of said completed vessels	$15,360,150.17	
On account of profit to plaintiff with respect to said completed vessels	3,439,007.57	
On account of cost of said uncompleted vessels	814,685.34	
On account of profit to plaintiff with respect to said uncompleted vessels	26,604.85	
Total		$19,640,447.93

Credits to plaintiff:

Total actual cost of constructing said completed vessels	15,344,832.08	
Profit to plaintiff with respect to said com-		

pleted vessels, not to exceed 10 per cent of $15,274,468.69	1,527,446.87	
Total actual cost of partial construction of said canceled vessels	699,746.46	
Profit to plaintiff with respect to said canceled vessels, not to exceed 10 per cent of $699,746.46	69,974.65	
Total		17,642,000.06
Overpayment to plaintiff		1,998,447.87

Defendant avers that for reasons set forth in said Set-off and Counterclaim the provisions of said contract providing for profit to plaintiff are invalid and unenforceable, and defendant's principal is entitled to recover from Plaintiff the said overpayment of at least $1,998,447.87.

One Hundred and Forty-eighth. In answer to Paragraph One Hundred and Forty-eighth of the Statement of Claim, defendant denies that any sum whatsoever is due or owing to plaintiff by defendant and on the contrary avers that plaintiff has been largely overpaid in connection with said contract as already set forth, and in further answer refers to the matters set forth in the Set-off and Counterclaim, and states that the contract in question was made and all acts thereunder were done or performed by defendant upon behalf of its said principal, as was well known to the plaintiff, and said

principal is the only party which may properly be sued in connection with said contracts.

DEFENSE TO THE THIRTEENTH CAUSE OF ACTION

(Contract 313 S. C.)

One Hundred and Forty-ninth. In answer to Paragraph One Hundred and Forty-ninth of the Statement of Claim, defendant admits that on or about the 15th day of May, 1918 (and alleges that the actual date was July 19, 1918), plaintiff and defendant made and entered into the contract referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were constructed for said principal, all of which was well known to the plaintiff as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-off and Counterclaim.

One Hundred and Fiftieth. In answer to Paragraph One Hundred and Fiftieth of the Statement of Claim, defendant avers that the provisions of said contract speak for themselves but defendant denies that the same is legally binding on the defendant or its principal for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-off and Counterclaim.

One Hundred and Fifty-first. Admitted except that the defendant denies that the plaintiff duly performed all the terms and conditions of the said

contract so far as said contract relates to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

One Hundred and Fifty-second. Admitted.

One Hundred and Fifty-third. Admitted.

One Hundred and Fifty-fourth. Admitted.

One Hundred and Fifty-fifth. Admitted.

One Hundred and Fifty-sixth. In answer to Paragraph One Hundred and Fifty-sixth of the Statement of Claim, defendant admits that plaintiff is entitled to a credit in the said amount of $84,044.29, against the balance owing by it to defendant's principal on account of the matters set forth in this Affidavit of Defense and Set-off and Counterclaim, and avers that for reasons referred to therein said principal is the only party which may properly be sued by plaintiff in connection with the contract in question.

DEFENSE TO THE FOURTEENTH CAUSE OF ACTION

(Contract 314 S. C.)

One Hundred and Fifty-seventh. In answer to Paragraph One Hundred and Fifty-seventh of the Statement of Claim, defendant admits that on or about the 15th day of May, 1918 (and alleges that the actual date was July 19, 1918), plaintiff and defendant entered into the contract in writing referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and

that said vessels were constructed for said principal, al of which was well known to the plaintiff as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-off and Counterclaim.

One Hundred and Fifty-eighth. In answer to Paragraph One Hundred and Fifty-eighth of the Statement of Claim, defendant avers that Article XIX of said contract speaks for itself, but defendant denies that the same is legally binding on the defendant or its principal for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-off and Counterclaim.

One Hundred and Fifty-ninth. Admitted.

One Hundred and Sixtieth. In answer to Paragraph One Hundred and Sixtieth of the Statement of Claim, defendant avers that it took possession of and accepted said vessels upon behalf of its principal, the United States of America, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-off and Counterclaim, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

One Hundred and Sixty-first. In answer to Paragraph One Hundred and Sixty-first of the Statement of Claim, the defendant denies that the increase in the labor cost resulting from wage increases amounted to $2,511,201.61 and avers that the total

increase in the labor cost resulting from wage increases authorized by it amounted to $5,418.52 and no more.

One Hundred and Sixty-second. Admitted.

One Hundred and Sixty-third. In answer to Paragraph One Hundred and Sixty-third of the Statement of Claim, defendant denies that the revised estimated cost of said vessels revised in accordance with the provisions of said contract is $14,384,302.11 and defendant avers that said cost, revised in so far as said contract can be interpreted, is $11,878,519.02 and no more, made up as follows:

Estimated cost,	$11,540,000.00
Costs resulting from wage increases	5,418.52
Add net cost of changes in said plans and specifications, as aforesaid	333,100.50
Total revised estimated cost	11,878,519.02

One Hundred and Sixty-fourth. In answer to Paragraph One Hundred and Sixty-fourth of the Statement of Claim, defendant refers to the averments set forth in Paragraph One Hundred and Sixtieth hereof and further denies that any audit was had of the revised estimated cost as alleged in the Complaint.

One Hundred and Sixty-fifth. In answer to Paragraph One Hundred and Sixty-fifth of the Statement of Claim defendant denies that the total actual cost of said vessels after applying all credits referred in said paragraph was $13,073,845.46, or any other or greater sum than $13,070,101.09.

One Hundred and Sixty-sixth. In answer to Paragraph One Hundred and Sixty-sixth of the State-

ment of Claim, defendant admits the first sentence thereof except to deny that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal, the United States of America, as at all times was well known to the plaintiff. Defendant denies that the actual cost of the said vessels was $13,073,845.46 and that the actual cost, when reduced by $48,130.79, was $13,025,714.67. Defendant avers that the actual cost was $13,070,101.09, which when reduced by $48,130.79 is $13,021,970.30 and no more.

One Hundred and Sixty-seventh. In answer to Paragraph One Hundred and Sixty-seventh of the Statement of Claim, defendant denies that the sum of $1,358,587.44 or any other amount represents the amount by which the revised base cost of said vessels was less than the actual cost thereof, reduced as aforesaid and the defendant avers that the actual cost was in excess of the estimated cost in the amount of $1,143,451.28.

One Hundred and Sixty-eighth. In answer to Paragraph One Hundred and Sixty-eighth of the Statement of Claim, defendant denies that the plaintiff is entitled to said sum of $559,659.62 as alleged or any other sum or sums of money from the defendant or its principal. The defendant avers that for all matters done or performed by plaintiff in connection with said contract, there became due plaintiff a net credit not in excess of $24,818.56, made up as follows:

Credits to Plaintiff:

Total actual cost of construction	$13,070,101.09

Profit to plaintiff, not to exceed 10 per cent of $13,021,979.30	1,302,197.03	
Total		$14,372,298.12
Payments to Plaintiff:		
On account of actual cost of construction	$13,172,512.23	
On account of profit to plaintiff	1,174,967.33	
Total		$14,347,479.56
Total Underpayment		24,818.56

Defendant avers that for reasons set forth in said Set-off and Counterclaim, the provisions of said contract providing for profit to plaintiff are invalid and unenforceable.

One Hundred and Sixty-ninth. In answer to Paragraph One Hundred and Sixty-ninth of the Statement of Claim, defendant avers that in connection with said contract, plaintiff is entitled to a credit not in excess of $24,818.56 against the balance owing by it to defendant's principal an account of the matters set forth in this Affidavit of Defense and Set-off and Counterclaim, and avers that for reasons referred to therein, said principal is the only party which may properly be sued by plaintiff in connection with the contract in question.

DEFENSE TO THE FIFTEENTH CAUSE OF ACTION

(Contract 340 S. C.)

One Hundred and Seventieth. In answer to Paragraph One Hundred and Seventieth of the State-

ment of Claim, defendant admits that on or about the 21st day of June, 1918, plaintiff and defendant made and entered into the contract referred to in said paragraph. Defendant denies that said plant or vessels were to be constructed for it and avers that said contract was entered into by it upon behalf of its principal, the United States of America, for which said plant and vessels were to be constructed, all of which was well known to the plaintiff, as is more particularly alleged hereafter in Paragraphs Third to Eighth, inclusive, of defendant's Set-off and Counterclaim.

One Hundred and Seventy-first. In answer to Paragraph One Hundred and Seventy-first of the Statement of Claim, defendant avers that said contract speaks for itself, but defendant denies that the same is legally binding on the defendant or its principal for the reasons more particularly set forth hereafter in Paragraphs Ninth and Thirty-seventh of the defendant's Set-off and Counterclaim.

One Hundred and Seventy-second. Admitted except that defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract relates to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

One Hundred and Seventy-third. Admitted.

One Hundred and Seventy-fourth. Admitted.

One Hundred and Seventy-fifth. Admitted.

One Hundred and Seventy-sixth. In answer to Paragraph One Hundred and Seventy-sixth of the Statement of Claim, defendant denies that the credit of $10,000.00, conceded by plaintiff with re-

spect to the office building at Bethlehem, Pennsylvania, is the correct amount of the credit to which defendant's principal is entitled with respect to said building. Upon the contrary, defendant avers that against the amount claimed by plaintiff under said contract, said principal is entitled to a credit in the amount of $200,000.00 as a proper allowance for plaintiff's use and occupancy of the building in question for purposes other than under said contract. Defendant admits that upon the completion of the audit referred to by plaintiff, there became due plaintiff from defendant's principal a sum not in excess of $86,173.58.

One Hundred and Seventy-seventh. In answer to Paragraph One Hundred and Seventy-seventh of the Statement of Claim, defendant avers that in connection with said contract plaintiff is entitled to a credit not in excess of $86,173.58 against the balance owing by it to defendant's principal on account of the matters set forth in this Affidavit of Defense and Set-off and Counterclaim, and avers that for reasons therein referred to, said principal is the only party which may properly be sued by plaintiff in connection with the contract in question.

DEFENSE TO THE SIXTEENTH CAUSE OF ACTION

(Contract 465 S. C.)

One Hundred and Seventy-eighth. In answer to Paragraph One Hundred and Seventy-eighth of the Statement of Claim, defendant admits that under date of the 15th day of July, 1918 (which contract was not effective until its delivery after January 28, 1919), plaintiff and defendant made and entered into

the contract in writing referred to in said paragraph. Defendant denies that said vessels were to be constructed for it, and avers that said contract was entered into by it upon behalf of its principal, the United States of America, and that said vessels were constructed for said principal, all of which is well known to the plaintiff as is more particularly alleged hereafter in Paragraphs Ninth to Eighth of defendant's Set-off and Counterclaim.

One Hundred and Seventy-ninth. In answer to Paragraph One Hundred and Seventy-ninth of the Statement of Claim, defendant avers that the provisions of said contract referred to by plaintiff speak for themselves, but defendant denies that the same are legally binding on the defendant or its principal for the reasons more particularly set forth hereafter in Paragraphs Ninth to Thirty-seventh of defendant's Set-off and Counterclaim.

One Hundred and Eightieth. Admitted.

One Hundred and Eighty-first. In answer to Paragraph One Hundred and Eighty-first of the Statement of Claim, defendant denies that the plaintiff without prejudice suspended work on said three vessels following the receipt of said instructions and thereafter without prejudice complied with all instructions of the defendant in that connection. The defendant avers that in giving plaintiff instructions to suspend all work on the three vessels mentioned in said paragraph and later to cancel so much of the contract as related to the construction of said three vessels, it acted in so doing not for itself nor in its own behalf but solely for and in behalf of its principal, the United States of America, as their agent and instrumentality pursuant to the power and

authority so to do vested in this defendant by the President of the United States by his Executive Order to that effect. The defendant further avers that the plaintiff failed and refused to suspend work on said three vessels upon receipt of the instructions so to do and did not comply with said instructions until several weeks thereafter.

One Hundred and Eighty-second. In answer to Paragraph One Hundred and Eighty-second of the Statement of Claim, defendant avers that it took possession of and accepted said three vessels upon behalf of its principal, the United States of America, all of which was well known to the plaintiff, but the defendant denies that the plaintiff duly performed all the terms and conditions of said contract so far as said contract related to the plaintiff's keeping full and accurate accounts of the cost of construction of said ships.

One Hundred and Eighty-third. In answer to Paragraph One Hundred and Eighty-third of the Statement of Claim, defendant denies that the increase in the labor cost in connection with said three vessels resulting from wage increase authorized by it amounted to the sum of $1,509,178.86 or any other sum.

One Hundred and Eighty-fourth. In answer to Paragraph One Hundred and Eighty-fourth of the Statement of Claim, defendant denies that the total amounts by which the estimated cost of said three vessels, and the fixed profit in connection therewith was increased by the changes in the plans and specifications relating thereto, were as alleged by plaintiff. Defendant avers that the net amount by which said fixed sum for profit for each of said three

vessels was increased in accordance with said Article by reason of all said changes in said plans and specifications aggregated not more than the sum of $82,000.00. Defendant further avers that the amounts of said increase and the estimated cost and profits for the purpose of determining the half-savings are immaterial for the reasons hereinafter set forth in Paragraph One Hundred and Eighty-sixth of this Affidavit of Defense.

One Hundred and Eighty-fifth. Admitted.

One Hundred and Eighty-sixth. In answer to Paragraph One Hundred and Eighty-sixth of the Statement of Claim, defendant denies that the revised estimated cost of said three vessels was $19,304,971.18. Defendant admits that the revised estimated cost of each of said vessels was in excess of the actual cost thereof by an amount such that the difference between the actual and revised estimated cost was in excess of $400,000.00.

One Hundred and Eighty-seventh. In answer to Paragraph One Hundred and Eighty-seventh of the Statement of Claim, defendant refers to the averments set forth in Paragraph One Hundred and Eighty-second hereof and further denies that any audit was had of the revised estimated cost as alleged in the Complaint.

One Hundred and Eighty-eighth. In answer to Paragraph One Hundred and Eighty-eighth of the Statement of Claim, defendant denies that the total actual cost of said three vessels, Hull Nos. 2505-2507, after applying all credits referred to in said paragraph, was $15,233,513.74, or any other or greater sum than $15,224,505.52, and the defendant de-

nies that the total actual cost of the work done on said three vessels, Hull Nos. 2508-10, was $3,033,-886.96, or any other or greater sum than $2,888,-648.70.

One hundred and Eighty-ninth. In answer to Paragraph One Hundred and Eighty-ninth of the Statement of Claim, defendant admits the first sentence thereof except to deny that the materials referred to therein became and remained the property of the defendant, and defendant avers that said materials were at all times the property of defendant's principal, the United States of Amer a, as at all times was well known to the plaintiff. Defendant denies that the actual cost of the said vessels was $15,233,513.74 and that the actual cost, when reduced by $152,598.36, was $15,080,915.38. Defendant avers that the actual cost was $15,224,505.52, which when reduced by $152,598.36 is $15,071,907.16 and no more.

One Hundred and Ninetieth. In answer to Paragraph One Hundred and Ninetieth of the Statement of Claim, defendant refers to the matters set forth in Paragraph One Hundred and Eighty-sixth of this Affidavit of Defense and the defendant denies that the plaintiff is entitled to any part of said sum for the reasons more particularly set out and alleged in Paragraphs Ninth to Thirty-seventh of the defendant's Set-Off and Counterclaim.

One Hundred and Ninety-First. In answer to Paragraph One Hundred and Ninety-first of the Statement of Claim, defendant avers that for all matters done or performed by plaintiff in connection with said contract there became due plaintiff a net credit not in excess of $830,908.06 made up as follows:

Credits to Plaintiff:

Actual cost of constructing said vessels, Hull Nos. 2505-7	$15,224,505.52	
Profit to plaintiff on account of said vessels, not to exceed 10 per cent of $15,071,907.16	1,507,190.72	
Actual cost of work on vessels Hull Nos. 2508-10 prior to termination thereof	2,888,648.70	
Profit to plaintiff on account of said vessels, Hull Nos. 2508-10	222,203.52	
Total		$19,842,548.46

Payments to Plaintiff:

On account of actual cost of said completed vessels, Hull Nos. 2505-7	15,240,199.30	
On account of profit to plaintiff on said completed vessels	864,[illegible]90.00	
On account of cost of said uncompleted vessels, Hull Nos. 2508-10	2,669,328.70	
On account of profit		

to plaintiff on said uncompleted vessels	238,112.40	
Total		19,011,640.40
Underpayment of		830,908.06

Defendant avers that for reasons set forth more particularly hereafter in Paragraphs Ninth to Thirty-seventh of the defendant's Set-Off and Counterclaim, the provisions of said contract providing for profit to plaintiff are invalid and unenforceable.

One Hundred and Ninety-second. In answer to Paragraph One Hundred and Ninety-second of the Statement of Claim, defendant avers that in connection with said contract, plaintiff is entitled to a credit not in excess of $830,908.06 against the balance owing by it to defendant's principal on account of the matters set forth in this Affidavit of Defense and Set-Off and Counterclaim, and avers that for reasons therein referred to said principal is the only party which may properly be sued by plaintiff in connection with the contract in question.

* * * * * * * *

DEFENSE TO THE NINETEENTH CAUSE OF ACTION

(Contract for Curtis Propelling Equipments, Etc.)

Two Hundred and Sixth. In answer to Paragraph Two Hundred and Sixth of the Statement of Claim, defendant admits that on or about the 30th day of October, 1918, plaintiff and defendant made and entered into the contract referred to in said paragraph. Defendant denies that said equipments

and spares were to be constructed for it and avers that said contract was entered into by it upon behalf of its principal, the United States of America, for which said machinery was to be constructed, all of which was well known to the plaintiff as is more particularly alleged hereafter in paragraphs Third to Eighth of the Set-Off and Counterclaim.

Two Hundred and Seventh. In answer to Paragraph Two Hundred and Seventh of the Statement of Claim, defendant avers that it took possession of and accepted said equipments and spares upon behalf of its said principal.

Two Hundred and Eighth. In answer to Paragraph Two Hundred and Eighth of the Statement of Claim, defendant denies that the sum of $90,019.55 is now due and owing from the defendant to the plaintiff or any other sum, but on the contrary the defendant avers that for reasons set forth in the defendant's Set-Off and Counterclaim, the provisions of said contract providing for payments to be paid the plaintiff are invalid and unenforceable and that the defendant's said principal is entitled to recover from the plaintiff the amount of said payments so paid in the sum of $656,088.00 and avers further that for reasons referred to in this Affidavit of Defense, Set-Off and Counterclaim said principal is the only party which may properly be sued by plaintiff in connection with the contract in question.

Defense to the Twentieth Cause of Action

(Restoration of Leased Land at Wilmington)

Two Hundred and Ninth. Admitted.

Two Hundred and Tenth. Admitted.

Two Hundred and Eleventh. In answer to Paragraph Two Hundred and Eleventh of the Statement of Claim, defendant admits that plaintiff is entitled to a credit in the said amount of $2,570.00 against the balance owing by it to defendant upon the causes of action hereinafter set forth in defendant's Set-Off and Counterclaim. Defendant avers that the agreements referred to in plaintiff's Twentieth Cause of Action were made by defendant upon behalf of its principal, the United States of America.

SET-OFF AND COUNTERCLAIM

First. Defendant avers that in case it should be decided that it, as well as or instead of its said principal, the United States of America, is personally obligated in connection with the contracts and matters set forth in the Statement of Claim, then and in such event defendant is entitled to set-off against any credits due plaintiff in connection therewith, all sums owing by plaintiff to defendant's said principal or to defendant arising out of said contracts and matters, as well as from the additional matters hereinafter set forth, and to recover the entire balance owing by plaintiff in connection with all of said contracts and matters.

Second. For the purpose of such set-off and counterclaim, defendant repeats and alleges all the

allegations hereinbefore set forth in its Affidavit of Defense, and makes the following additional averments:

Third. On the sixth day of April, 1917, the United States of America declared war upon the Imperial German Government, and active hostilities continued from that date until the signing of the armistice on the 11th day of November, 1918. A state of war continued until July 2, 1921, the date fixed under the proclamation by the President on November 14, 1921, of the treaty of peace between the United States and Germany and under the joint resolution of Congress of July 2, 1921.

Fourth. Under date of July 11, 1917, the President of the United States, by virtue of the authority in him vested by the Act of June 15, 1917 (40 Stat. at L., p. 182) made an Executive order, which reads as follows:

> Delegating to the Shipping Board and the Emergency Fleet Corporation the powers granted the President by the emergency shipping legislation.
>
> By virtue of authority vested in me in the section entitled "Emergency shipping fund" of an act of Congress entitled "An act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved June 15, 1917, I hereby direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said sec-

tion of said act in so far as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessels in process of construction, whether on the ways or already launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction.

And I do further direct that the United States Shipping Board shall have and exercise all power and authority vested in me in said section of said Act, in so far as applicable to and in furtherance of the taking over of title or possession, by purchase or requisition, of constructed vessels, or parts thereof or charters therein, and the operation, management, and disposition of such vessels, and of all other vessels heretofore or hereafter acquired by the United States. The powers herein delegated to the United States Shipping Board may, in the discretion of said board, be exercised directly by the said board, or by it through the United States Shipping Board Emergency Fleet Corporation, or through any other corporation organized by it for such purpose.

Woodrow Wilson.

July 11, 1917.

Fifth. Under date of December 3, 1918, the President of the United States, by virtue of the authority in him vested by said Act of June 15, 1917, made a further Executive order, which reads as follows:

Delegating to the United States Shipping Board and to the United States Shipping Board Emergency Fleet Corporation, respectively, powers granted to the President by Acts of Congress relative to the emergency shipping fund and approved on or prior to November 4, 1918.

Whereas by Executive order, No. 2664, dated July 11, 1917, I delegated to the United States Shipping Board and to the United States Shipping Board Emergency Fleet Corporation, respectively, certain powers vested in me under the section entitled "Emergency shipping fund" of the urgent deficiency appropriation act approved June 15, 1917; and

Whereas since the issuance of said Executive order the said powers granted in said act have been variously affected or extended by the section entitled "Emergency shipping fund" of the urgent deficiency appropriation act approved October 6, 1917, by public act No. 138, Sixty-fifth Congress, approved April 22, 1918, amending said section of said act of June 15, 1917, and by the sections entitled "Emergency shipping fund" in the sundry civil appropriation act approved July 1, 1918, and in the first deficiency appropriation act, 1919, approved November 4, 1918, respectively.

Now, therefore, by virtue of the authority vested in me by said laws, supplementing said order No. 2664, but in no way limiting or restricting the effect thereof, or acts heretofore done in pursuance thereof, I do hereby delegate

all the power and authority so vested in me, and do direct that—

1. The United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority now vested in me by said laws with reference to any and all activities which may be directly or indirectly applicable to ship or plant construction; and

2. The United States Shipping Board shall have and exercise, subject to its discretion in turn to delegate such exercise as provided in said Executive Order No. 2664, all power and authority now vested in me by said laws with reference to constructed dry docks, marine railways, and piers, and to constructed vessels or parts thereof, or charters therein; to the operation, management, and disposition of such dry docks, marine railways, piers, and vessels, and to such other matters as are not herein mentioned.

3. All acts heretofore done by said corporation or by said board, with reference, respectively, to the kinds of power or authority herein delegated to each, and which could have been properly done by me under such statutes or any of them, be, and they are hereby, ratified and confirmed.

Woodrow Wilson.

December 3, 1918.

Sixth. Each and every action taken by the defendant as hereinafter alleged was taken solely by virtue of the power and authority conferred upon the President of the United States in and by the

said Act of June 15, 1917, and the Acts of Congress amendatory thereof, and by the President delegated to the defendant. The defendant, under its certificate of incorporation and under the said Shipping Act, 1916, had no power or authority to bind the United States as its representative or agent or otherwise with respect thereto.

Seventh. Each and all of the contracts hereinafter referred to which were entered into, or signed by, or in the name of, the defendant were made and entered into by it solely by virtue of the power and authority delegated to it as an agency of the United States by the President of the United States, under and pursuant to said Act of June 15, 1917, and the Acts amendatory thereof.

Eighth. The transactions with the plaintiff Bethlehem Shipbuilding Corporation, Ltd., hereinbefore and hereinafter referred to, involved amounts greatly in excess of $50,000,000 and under the Shipping Act of 1916, Section 13, which was in full force and effect during the period in which the shipbuilding contracts herein referred to and the supplements thereto were made, the defendant was prohibited from entering into any of said contracts as a principal or in its corporate or individual capacity and under then existing law could enter into the same only as an agent of its principal, the United States of America.

Ninth. *The Bethlehem Steel Corporation* was incorporated under the laws of the State of New Jersey on or about December 10, 1904, as a reorganization of the United States Shipbuilding Company, a corporation then engaged in the building of ships. Said Bethlehem Steel Corporation at or about the

time of its incorporation acquired the entire capital stocks (except qualifying shares held by the directors) of the Bethlehem Steel Company, and Union Iron Works, the Harlan & Hollingsworth Corporation, Samuel L. Moore & Sons Corporation, and of other corporations. The Bethlehem Steel Company then owned and later transferred to the Bethlehem Steel Corporation, (which corporation has since continuously owned,) all the capital stock of the Fore River Shipbuilding Corporation and of the Penn-Mary Steel Company. The Bethlehem Steel Corporation assumed control of the corporations above specifically named as of January 1, 1905, and thereafter until the organization of the Bethlehem Shipbuilding Corporation, Ltd., the Bethlehem Steel Corporation operated the business and plants of said corporations above specifically named, and particularly the shipbuilding plants as subsidiaries, and in fact as incorporated departments or divisions of its shipbuilding organization.

Tenth. The said Penn-Mary Steel Company prior to the transactions hereinafter referred to, owned, among other things, a large shipbuilding plant at Sparrow's Point, Maryland, which was, after February, 1916, operated by the Bethlehem Steel Company. Prior to February, 1916, said plant had been operated by Maryland Steel Company, a Maryland Corporation, the entire capital stock of which was owned by Penn-Mary Steel Company, and contracts with other companies, owned and controlled by the Bethlehem Steel Corporation, for the construction of vessels requisitioned as hereinafter set forth had been made by and in the name of said Maryland Steel Company and were in force on August 3, 1917. The said Maryland Steel Company

has since been dissolved, and all its assets taken over and liabilities assumed by Bethlehem Steel Company.

The Fore River Shipbuilding Corporation, prior to said transactions, and thereafter, until the acquisition thereof by Bethlehem Shipbuilding Corporation, Ltd., owned a large and fully equipped shipbuilding plant in the State of Massachusetts, which is now owned and operated by the Bethlehem Shipbuilding Corporation, Ltd. The Union Iron Works Company then owned, and has since continuously owned, the entire capital stock of Union Iron Works and of Union Iron Works Dry Dock Company, both corporations organized under the laws of the State of California. The Union Iron Works Company during the said period operated (until the operation thereof was taken over by the Bethlehem Shipbuilding Corporation, Ltd.), a shipbuilding plant known as the "Union plant" on the Pacific Coast at or near San Francisco in the State of California.

Eleventh. On or about August 3, 1917, the United States of America, acting through the defendant (under the powers delegated to, and conferred upon it by the President of the United States through said Executive order of July 11, 1917, under said act of June 15, 1917), as a war measure, requisitioned all vessels of over 2,500 tons deadweight capacity then under construction in all shipyards throughout the United States, including such vessels then under construction in the plants and yards of the Fore River Shipbuilding Corporation, Bethlehem Steel Company, and Union Iron Works Company, and of said Harlan & Hollingsworth Corporation, and Samuel L. Moore and Sons Corporation,

and thereafter entered into contracts with said respective corporations for the completion of the vessels so requisitioned, as more fully hereinafter set forth.

Twelfth. Thereupon the Bethlehem Steel Corporation, for the purpose of carrying out said contracts for the completion of the vessels so requisitioned at the aforesaid plants of its said subsidiary and controlled companies, and for other purposes, caused the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., to be organized under the laws of the State of Delaware, on or about October 15th, 1917. On or about October 30, 1917, the plaintiff, the Bethlehem Shipbuilding Corporation, Ltd., acquired through corporate merger the properties of said Harlan & Hollingsworth Corporation, including its shipbuilding plant at Wilmington, Delaware, and the properties formerly of Samuel L. Moore & Sons Corporation, including its shipbuilding plant at Elizabethport, New Jersey, except certain contracts then in force between said Samuel L. Moore & Sons Corporation and the United States. The properties of said Samuel L. Moore & Sons Corporation so acquired were transferred to Moore Shipbuilding Corporation, a corporation organized under the laws of the State of Delaware, and thereafter said Moore Shipbuilding Corporation under the laws of Delaware was merged with the Bethlehem Shipbuilding Corporation, Ltd. By such corporate merger the Bethlehem Shipbuilding Corporation, Ltd., assumed all the liabilities of said Harlan and Moore corporations, and particularly their respective contractual obligations for the completion of the ships under construction requisitioned as aforesaid. At or about the same time the plaintiff ac-

quired from said Bethlehem Steel Company and Penn-Mary Steel Company the said shipbuilding plant at Sparrows Point, Maryland, and said plaintiff has since such acquisition continuously operated the same.

Thirteenth. On or about November 1, 1917, and pursuant to a plan for entering into contracts with the United States of America for the construction of steel vessels, the plants of the Fore River Shipbuilding Corporation, and Union Iron Works Company and of said Union Iron Works Dry Dock Company were leased by said respective companies to the plaintiff, the Bethlehem Shipbuilding Corporation, Ltd. From the effective dates of said leases plaintiff has operated such leased plants. On or about the same date, the plaintiff, the Bethlehem Shipbuilding Corporation, Ltd., entered into agreements with the Bethlehem Steel Company, Fore River Shipbuilding Corporation and Union Iron Works Company, and Maryland Steel Company, whereby the Bethlehem Shipbuilding Corporation (Ltd.) undertook the performance in the name and in behalf of said corporations, respectively, and of said Maryland Steel Company of all of their outstanding contracts with the United States of America, for the construction of vessels requisitioned by said requisition order of August 3, 1917. Thereupon the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., entered into and continued in the performance of said contracts and of contracts made in substitution or modification thereof during the period herein referred to, with the consent of the defendant.

Fourteenth. On or about December 13, 1917, the plaintiff, the Bethlehem Shipbuilding Corporation,

Ltd., acting through its officers, agents, and other representatives, entered into preliminary negotiations with the defendant (representing the United States of America and acting under authority of said executive order of July 11, 1917) for the construction of other steel vessels required by the United States of America and deemed necessary for the prosecution of the war.

Fifteenth. At the time of the organization of the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., and the time of the making of the contracts for building ships hereinbefore and hereinafter referred to between the United States of America and the plaintiff, the Bethlehem Steel Corporation, Bethlehem Steel Company, Fore River Shipbuilding Corporation, and Union Iron Works Company, and the Bethlehem Shipbuilding Corporation, Ltd., through its predecessors, the Samuel L. Moore & Sons Corporation and the Harlan & Hollingsworth Corporation, were all thoroughly familiar from practical experience which had extended over a period of many years with the cost of building the various standard types of steel vessels which had prior thereto been built by said respective corporations at their respective yards, and each of said shipbuilding corporations then maintained a large, efficient, and well-equipped organization engaged in the building of steel vessels. The greater part, if not all of the steel, fabricated or otherwise, required for such shipbuilding operations had been obtained by said shipbuilding companies from the Bethlehem Steel Corporation.

Sixteenth. The Bethlehem Shipbuilding Corporation, Ltd., at the time of, and after its incorporation, took over a large part of the organization and

personnel of the said shipbuilding companies merged into it, to wit, Harlan & Hollingsworth and Moore Shipbuilding Corporation and of the shipyards of the other shipbuilding corporations above mentioned, control of which it acquired as above mentioned, by lease, or otherwise, and the organization and personnel of the Sparrow's Point plant acquired as aforesaid. Upon its organization, and prior to the entering into of contracts with the United States of America hereinbefore and hereinafter mentioned, the general basis of organization of the defendant Bethlehem Shipbuilding Corporation, Ltd., was, and continued thereafter to be, substantially as follows: The shipbuilding plant at Wilmington, Delaware, which formerly belonged to Harlan & Hollingsworth Corporation, was operated and known as the Harlan plant. The shipbuilding plant at Elizabethport, New Jersey, which formerly belonged to said Moore Shipbuilding Corporation, was operated and known as the Moore plant. The shipbuilding plant of the Fore River Shipbuilding Corporation at Fore River, Massachusetts, was operated and known as the Fore River Plant. The shipbuilding plant at Sparrow's Point, Maryland, was operated and known as the Sparrow's Point plant, and the works on the Pacific Coast formerly operated by the Union Iron Works Company and by the Union Iron Works Dry Dock Company, were operated and known as the Union plant. By reason of the fact of the aforesaid long experience of the Bethlehem Steel Company, Fore River Shipbuilding Corporation, and Union Iron Works Company, and of the said Harlan and Moore corporations so merged, in building such vessels, the plaintiff Bethlehem Shipbuilding Corporation, Ltd., was entirely familiar with, and had special expert knowledge of

the actual and probable cost of building such vessels and of estimating the profits to be derived therefrom. Neither the United States of America, nor its said agent, the defendant, nor the United States Shipping Board, nor any members of the organization of either of said bodies (except, as hereinafter stated, Charles M. Schwab) had any such knowledge or means of acquiring the same.

Seventeenth. Defendant further avers that at the time of the making of the false representations herein alleged with regard to the estimated cost of the vessels to be constructed under said contracts, the wages of all labor to be employed on such ship construction had been or were about to be fixed at a standard rate applicable to the shipbuilding industry, as was well known to the plaintiff, and the rates of wages so fixed and to be fixed by action of the Government during the war covered specifically every grade and class of workmen to be employed in such ship construction; further, that prior to the negotiations aforesaid and the making of the false representations herein alleged the United States of America as a war measure and by agreement of all the principal steel companies, including the Bethlehem Steel Corporation and Bethlehem Steel Company, had fixed the price of steel and of all steel products for use in shipbuilding throughout the United States; that such prices had been fixed in great detail and that there was a well-known and recognized price for all steel for ship construction and such prices were intended to be and were in fact unchanged throughout the period of ship construction herein alleged; further, that the United States of America through its control of transportation had fixed transportation costs and controlled

all other basic industries entering into the production of ships.

Defendant further avers that the costs of labor and steel constitute by far the largest items of the cost of ship construction and that such costs as well as all other costs entering into the cost of ship construction were well known to the plaintiff and could be readily computed and ascertained by it.

The said plaintiff also knew the approximate amount and number of hours of labor and amount and cost of material and all other elements of costs entering into the construction of such vessels.

Eighteenth. Because of the necessity for constructing the vessels to meet the emergencies and requirements of the war, particularly the enormous loss of vessels caused by the unrestricted submarine warfare undertaken by the German Empire, an extraordinary emergency of the war existed and rendered it necessary for the United States of America not only to control the entire shipbuilding, steel, coal, transportation, and other industries of the United States but to enter into contracts with shipbuilders for the construction of as many vessels as it was possible for each shipbuilder to construct, and to have the same constructed in the least possible period of time. These conditions and this emergency were well known to the public in general, and particularly to the plaintiff herein named.

Nineteenth. Under these conditions the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., acting through its duly authorized representatives, during the months of October, November, and December, 1917, represented to the United States of America, through its agency, the defendant, that it was im-

practicable to estimate within a reasonable percentage what would be the actual cost of constructing vessels similar to those theretofore constructed at the various plants then operated by the Bethlehem Shipbuilding Corporation, Ltd., and proposed that said vessels should be constructed for the United States of America on a basis of actual cost plus a fixed fee, with an agreed-upon probable cost the plaintiff to be paid in addition to the fixed fee one-half of any saving that might be made below the estimated cost figure, and with the further provision that the estimated cost figure should be increased due to any increase in rate of wages that might be approved by the defendant. The contracts hereinafter referred to were drawn in accordance with said proposal and similar proposals and the respective amounts stated therein as the estimated actual cost of construction were represented by the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., acting through its said representatives, as fair and reasonable estimates of said costs, based upon the wage scale then in effect and upon existing costs of material, together with a reasonable allowance to cover increases in cost in the ensuing eighteen months, and said corporation refused to undertake said construction if lesser sums were insisted upon by the United States of America.

Twentieth. Defendant avers that said representations were knowingly false in that the Bethlehem Shipbuilding Corporation, Ltd., as hereinbefore set forth, was in a position to know what would be the approximate cost of constructing said vessels, and the said amounts stated in said contracts were known by the said representatives of said corporation to be very greatly in excess of any costs which

could reasonably be anticipated. Defendant avers that said estimates and representations were made for the purpose of enabling the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., to derive excessive, unreasonable and unconscionable profits from said contracts.

Twenty-first. The respective amounts named in said contracts were objected to by the duly authorized representatives of the defendant, acting upon behalf of the United States of America, as being excessive and unreasonable, and said amounts were assented to by said representatives only because of the repeated assurance given by said representatives of the Bethlehem Shipbuilding Corporation, Ltd., that said estimates had been made in good faith, were entirely fair and reasonable, and were the lowest sums for which it would undertake the work in question.

Twenty-second. The fixed fees specified in said contracts were based upon the fictitious estimates stated in the respective contracts as the estimated actual cost of construction, and were in all or in substantially all of said contracts, approximately equal to ten per cent of such estimated cost.

Twenty-third. Defendant avers that at the time of the execution of said contracts the Bethlehem Shipbuilding Corporation, Ltd., was in a position to know and had every reason to expect that the sum named in the respective contracts as a fixed fee would in all probability equal or exceed a fair and reasonable profit for the services to be performed thereunder, and the terms of said contracts relating to the respective amounts of the estimated costs and "half-savings" were insisted upon by said corpora-

tion for the purpose of enabling it to derive excessive, unreasonable and unconscionable profits from said contracts.

Twenty-fourth. The defendant further avers that, under the common law and under the laws of the United States, the duty and obligation were imposed upon the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., so entering into contractual relations with the United States, to perform each and all of said shipbuilding contracts fairly and honestly at the least practicable expense and in the shortest practicable time, and that whatever provisions might be contained in the said contracts to the contrary notwithstanding, the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., was entitled to receive from the United States only a fair and reasonable profit upon the work done, and that any term, covenant, or provision in any such contract for the payment of any sum in excess of a fair and reasonable profit upon the fair and reasonable cost of the work was and is void and unenforceable.

Twenty-fifth. The defendant further avers that during the period in which the hereinafter specified contracts were entered into the United States of America, acting under its constitutional powers during the war, had in other instances fixed and limited the profit to be made by other shipbuilders constructing similar ships under similar circumstances, and in the vicinity of the various shipbuilding plants operated by the plaintiff above named, at a sum not to exceed 10% of the actual cost, and in many instances at a sum much less than 10% of actual cost; and the defendant further avers that 10% of the actual cost with respect to contracts for building ships of the type and tonnage of the vessels con-

tracted for as hereinafter alleged is the maximum profit which in fairness and reason, and under the settled principles of law, a shipbuilder under the circumstances herein alleged is entitled to receive from the United States of America.

Twenty-sixth. The defendant further avers that on or about the 11th day of April, 1918, and before the effective date of many of the shipbuilding contracts hereinafter specifically referred to, Charles M. Schwab, at the request of the President of the United States, entered upon the office of Director General of the Fleet Corporation and continued in that office until December 12, 1918. During said period said Charles M. Schwab was vested by the defendant with full power and authority to make new contracts for shipbuilding and to modify all then existing contracts for shipbuilding and to exercise all powers of modifications of then existing contracts vested in the President of the United States by the said act of June 15, 1917, and by the President delegated to the Fleet Corporation. The powers so vested in said Director General included the power to require and compel the shipbuilding contractors to modify any then existing contracts by reducing the profits therein covenanted for to a reasonable profit. In the exercise of such power the said Charles M. Schwab, acting as Director General as aforesaid, established with respect to other contractors a policy, in behalf of the United States, of reducing excessive profits under then existing contracts to not over 10% of the actual and reasonable cost of construction, and with respect to other contractors limited the profits in contracts to be made to not over 10% of such cost, and declared that the United States Government would not per-

mit contractors engaged in building ships to obtain excessive prices or profits.

Twenty-seventh. At the time said Charles M. Schwab was so acting as Director General and took the aforesaid action with respect to other shipbuilding contractors he was one of the largest stockholders of the Bethlehem Steel Corporation and was Chairman of its Board of Directors and held a corresponding position in the formal corporate organization of the plaintiff, the Bethlehem Shipbuilding Corporation, Ltd., and by virtue of his position was in control of the affairs of the Fore River Shipbuilding Corporation, Bethlehem Steel Company, and Union Iron Works Company. During said period Joseph W. Powell was Vice President of the plaintiff, the Bethlehem Shipbuilding Corporation, Ltd., and, as such, in charge of said contracts and of the performance thereof. During this same period said Charles M. Schwab, while acting as Director General of the defendant as aforesaid, took no official action with regard to the herein-specified shipbuilding contracts, and refrained from at any time questioning the aforesaid provisions in said construction contracts with respect to the fixed fee for profit and also with respect to the sharing, as aforesaid, of the difference between the fictitious, estimated cost, and the actual cost, and suffered and permitted the said contracts to remain in full force and effect and new contracts of like tenor and effect to be entered into between the United States of America and Bethlehem Shipbuilding Corporation, Ltd., and payments to be made thereunder, to all intents and purposes as if the same constituted valid and binding obligations of the United States.

Twenty-eighth. During the period aforesaid said Charles M. Schwab was placed by the trustees of the defendant in a position of power and authority over all contracts for ship construction, under which he had the right and power to discharge and remove any subordinate official of the defendant who did not carry out his commands, and was in a position of practical domination over the various officials of the defendant charged with the duty of preparing and executing the shipbuilding contracts hereinafter mentioned. At the same time the said Charles M. Schwab, through his office as Chairman of the Board of Directors of the Bethlehem Steel Corporation and Bethlehem Shipbuilding Corporation, Ltd., his large holdings of stock in the former and his dominating position in both corporations as well as in the Bethlehem Steel Company, Fore River Shipbuilding Corporation, and Union Iron Works Company, had the power and authority to direct the terms on which the said contracts should be entered into by and in the name of the plaintiff, Bethlehem Shipbuilding Corporation, Ltd.

Twenty-ninth. The defendant further avers that during the said period while said Charles M. Schwab was Director General, the defendant, under the powers delegated to it by said Executive Order of July 11, 1917, and thereafter by the order of December 3, 1918, and under the terms of the Emergency Shipping Fund Provisions of the said Act of June 15, 1917, had the power to modify, suspend, and cancel each and all of the said shipbuilding contracts hereinbefore and hereinafter referred to, and thereby to require the contracting shipbuilder to consent to a reduction of the amounts thereby agreed upon for profits and half savings as aforesaid and to reduce

the profits thereby covenanted to be paid to a fair and reasonable amount.

Thirtieth. Defendant further avers that the contracts for building new ships (as distinguished from ships requisitioned under construction) hereinabove alleged were known and designated by the following numbers, and provided for the construction of ships in number and type as follows:

Contract No.	Number of ships	Type	Dead-weight each	Shipyard	Dated back to—
					1917
177 S. C.	12	Steel Tank	10,100	Union	Dec. 31
178 S. C.	3	do	7,500	Harlan	Do.
	3	Steel cargo	7,400		
179 S. C.	3	do	10,100	Sparrows Point	Do.
182 S. C.	2	Troop ships (steel)		do	Do.
183 S. C.	3	Steel tank	9,100	Fore River	Do.
184 S. C.	6	Tugboats		Moore	Do.
184 S. C. (supplemental)	14	do		do	
191 S. C.	4	Steel cargo	2 of 11,800, 1 of 11,700, 1 of 12,000	Union	Do.
196 S. C.	1	do	7,400	Sparrows Point	Do.
					1918
226 S. C.	4	Steel tank	10,100	do	Mar. 18
	3	Steel cargo	7,400		
230 S. C.	2	do	11,800	Union	Apr. 22

Contract No.	Number of ships	Type	Dead-weight each	Shipyard	Dated back to—
299 S. C.	3	Steel tank	9,100	Fore River	Apr. 30.
300 S. C.	3	do	10,100	Sparrows Point	Do.
301 S. C.	6	do	10,100	do	
	[1]6	Steel cargo	11,800	Union	Do.
312 S. C.	[2]3	do	7,400	Sparrows Point	May 15.
313 S. C.	[2]10	Tugboats		Moore	Do.
314 S. C.	3	Steel tank	7,500	Harlan	Do.
	7	Steel cargo	5,100		
340 S. C.	[2]20	Troopships		Union	June 21.
465 S. C.	[1]6	do		Sparrows Point	July 15.

[1]3 ships canceled.
[2]All canceled.

All of the above contracts with the exception of Numbers 184 S. C., 184 S. C. supplemental, and 312 S. C. are printed as Exhibits as part of the plaintiff's Statement of Claim in Assumpsit. Contracts 184 S. C., 184 S. C. supplemental, and 312 S. C. are printed in the Answer of the Bethlehem Shipbuilding Corporation, Ltd. (the plaintiff in this Action) filed in the suit in equity brought against the Bethlehem Shipbuilding Corporation, Ltd. and others by the United States of America in the United States District Court for the Eastern District of Pennsylvania, said suit being numbered "In Equity No. 3315." The said contracts 184 S. C. and 184 S. C. supplemental are numbered Exhibit 10, and said contract 312 S. C. is numbered Exhibit 18 in said Answer. The defendant, in order to simplify the record and prevent duplication, begs leave to refer with the same force and effect to said exhibits as

though the same were printed as a part of this Affidavit of Defense and Set-Off and Counterclaim.

The nominal date of each of said contracts does not represent the effective date thereof, which in every case was later than the nominal date.

Thirty-first. The terms and provisions of said contracts above specified which related to the basis for ascertaining the cost were substantially the same and the actual cost was thus defined by Article XVII of said contracts as follows:

XVII.

For the purposes of this contract actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses), and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts

or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used or shall have been or shall be invested in plant, equipment, etc., that shall be used in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed it shall be determined by arbitration in the manner provided for in Article XX.

Thirty-second. The terms and provisions of said contracts by which the price to be paid for each of the vessels to be constructed thereunder are substantially similar. The terms of said contracts relating to price and fixed fee for profit and to the "Half Savings Clause" are contained in Article XIX.

In each of the contracts for ships to be built at yards on the East Coast, Article XIX, reads sub-

stantially (necessary changes being made) as does Article XIX of Contract 178 S. C., to wit:

XIX.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at the Navy Yard of the United States at Philadelphia, Pennsylvania, of one million six hundred and twelve thousand dollars ($1,612,000) for each of said tank vessels, and of one million three hundred and fifty thousand dollars ($1,350,000) for each of said cargo vessels. Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any tank vessel in the execution of the work reach or exceed the sum of one million six hundred and

twelve thousand dollars ($1,612,000), or of any cargo vessel in the execution of the work reach or exceed the sum of one million three hundred and fifty thousand dollars ($1,350,000), or such revised estimated cost in lieu thereof in any case as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of one hundred and sixty thousand dollars ($160,000) for such tank vessel, and one hundred and twenty-five thousand dollars ($125,000) for such cargo vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sums for profit of one hundred and sixty thousand dollars ($160,000) and one hundred and twenty-five thousand dollars ($125,000), respectively, one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

Said fixed sums for profit of one hundred and sixty thousand dollars ($160,000) and one hundred and twenty-five thousand dollars ($125,000), respectively, shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent (10%) thereof as part payment on account of said profit, such payments of said ten per cent (10%) to be continued until ninety per cent (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter, further payments on account of said fixed sums

for profit shall not be required until the vessel in respect of which such sums shall be payable shall have been completed, delivered, and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made, together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above said sums of one hundred and sixty thousand dollars ($160,000) and one hundred and twenty-five thousand dollars ($125,000), respectively, determined as hereinbefore provided shall become immediately due and payable.

Article XIX in each of the contracts for ships to be built at yards on the West Coast is substantially identical except that the phrase "In force January 3, 1918, at said shipyard of the contractor", or an equivalent phrase, is used in place of the phrase used in the East Coast contracts, "In force January 3, 1918, at the Navy Yard of the United States", (Boston, Brooklyn, Norfolk, Philadelphia, as the case may be).

Thirty-third. Defendant further avers that contract No. 465 S. C., in the covenants therein contained relating to profits and savings, differed from the others in that it provided that the amount of the "one-half of the savings" to be paid to the shipbuilder should not exceed $200,000.00 per vessel.

Contract No. 182 S. C. differed from the others by providing that the shipbuilder should be paid the actual cost of construction plus a fixed profit of 10% of said cost, without any half-savings clause.

Complainant avers that with respect to said two contracts the Bethlehem Shipbuilding Corporation, Ltd., is entitled only to a fair and reasonable profit upon the reasonable and proper cost and that the provision for "half savings" in contract No. 465 S. C., is unconscionable, void, and unenforceable in like manner as with respect to the other contracts above specified.

Thirty-fourth. Defendant further avers that with respect to contracts numbers 178 S. C., 179 S. C., 183 S. C., 184 S. C., 184 S. C. Supplemental, 196 S. C., 226 S. C., 299 S. C., 300 S. C., 312 S. C., 313 S. C., 314 S. C., 465 S. C., the estimated actual cost under Article XIX is incapable of computation in that it is stated to be—

> "at the wage schedule as adopted by the Federal Adjustment Wage Board and in force on January 3, 1918, at the Navy Yard of the United States, * * *" (Boston, Brooklyn, Norfolk, Philadelphia, as the case may be)—

as will more fully appear by reference to the copies of each of said contracts hereinbefore referred to as exhibits. At the time of the making and delivery of said contracts and thereafter there was in fact no wage schedule adopted by the Federal Adjustment Wage Board in force at any one of the Navy Yards specified in the respective contracts. By reason thereof defendant avers that the "half-savings clause" in each of said contracts is void for uncertainty as well as for the reasons hereinabove specifically alleged.

Thirty-fifth. Defendant further avers that in the course of the construction of said vessels the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., from

time to time requested payment of amounts of money claimed to be due on account of the said half-savings clause in the contracts referred to, and that thereupon from time to time payments were made under mistake of law, without warrant of law, and under erroneous construction of the respective contracts, by the disbursing officers of the defendant of moneys of the United States of America, and such payments were applied by plaintiff on account of moneys claimed by it to be due and payable under said half-savings clauses of said contracts.

Thirty-sixth. Annexed hereto as a part of this pleading is a schedule marked "Exhibit A", showing in detail in column 15 thereof with respect to each of the contracts therein specified, the actual amounts paid to Bethlehem Shipbuilding Corporation, Ltd., as aforesaid on account of "Half savings", amounting in the aggregate to $9,014,633.05.

Thirty-seventh. Exhibit A also shows in detail with respect to each of the contracts therein specified the following particulars in addition to the "half-savings" heretofore mentioned:

Column
1—No. of Cause of Action.
2—Contract Number.
3—Shipyard Plant.
4—Net Construction Cost.
5—Surplus Materials.
6—Total Cost.
7—Payments to Shipbuilder on Cost.
8—Recoverable Overpayment on Cost.
9—Net Cost—Basis of Profit.
10—Percentage of Cost Conceded for Profit.

Column

11—Credits to Shipbuilder as Profit.
12—Payments to Shipbuilder for Profit.
13—Recoverable Overpayments on Profit.
16—Grand Total Credits to Shipbuilder.
17—Grand Total Payments to Shipbuilder.
18—Grand Total Recoverable Overpayments.

After deducting the overpayments on "Half Savings" heretofore mentioned, the said Exhibit shows an overpayment by the Defendant to the Plaintiff of an amount aggregating $401,053.89.

Defendant does not concede that plaintiff Bethlehem Shipbuilding Corporation, Ltd., is entitled to as much as 10% upon actual cost as a fair and reasonable profit, but, as more fully elsewhere herein set forth, contends that such profit should be fixed by the court after hearing the evidence. The computation in said schedule is made up on the basis stated only for convenience of illustration.

Thirty-eighth. Defendant further avers that in addition to the sums hereinabove alleged there was advanced by the defendant as agent as aforesaid, the sum of $4,832,212.51, or thereabouts, moneys of the United States of America, and said amount was received by the said plaintiff Bethlehem Shipbuilding Corporation, Ltd., to its use, and the greater part thereof expended in and about the permanent betterment and improvement of the plants owned or operated by it and herein referred to as the Alameda, Sparrows Point, and Harlan plants, respectively, and upon an office building at South Bethlehem, Pennsylvania. The detail of the moneys so advanced and expended upon the said shipbuilding plants and office building is stated in a schedule

hereto annexed, made a part hereof and marked "Exhibit C." The said moneys were all (except the moneys advanced for said office building) advanced under provisions in the contracts which are substantially identical with Article XXVIII of Contract 177 S. C. which reads as follows:

XXVIII

In order to provide the Contractor with two additional slipways, with the necessary cranes and other appliances, additional wharves, buildings, including shop and office buildings, compressor plant, tools, and other equipment (hereinafter referred to as the special improvements, tools, and equipment), all of which are necessary to construct the vessels under this contract, the Owner agrees to deposit with a depositary or depositaries, designated by the Contractor and approved by the Owner, from time to time as requested by the Contractor, up to the sum of One Million Dollars ($1,000,000). The amounts so deposited shall be used to pay the cost of the special improvements, tools, and equipment, including cost of labor, cost of superintendence, and other charges in connection therewith. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representative. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. The title to such deposit and interest thereon shall

be and remain in the Owner until withdrawn as aforesaid, and upon final completion of this contract or upon default of the Contractor hereunder the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article. The special improvements, tools, and equipment shall continue to be the property of the Owner until they shall have been purchased by the Contractor or abandoned by the Owner as hereinafter provided.

Upon the completion of the said twelve (12) vessels the value of the special improvements, tools, and equipment shall be agreed upon between the parties hereto. In case the parties hereto shall be unable to agree as to the value thereof, it shall be determined in accordance with the provisions of Article XX hereof. The value of the special improvements, tools, and equipment shall be agreed or determined and listed separately. In determining said value there shall be taken into account the original cost as shown by the vouchers delivered as aforesaid, the cost in a normal material and labor market, all circumstances, such as the use made of the special improvements, tools, and equipment during the life of this contract, the conditions of the shipbuilding business generally, the amount of depreciation therein due to wear and tear, and the replacement value at market prices at that time. Such value having been agreed upon or determined as aforesaid, the Contractor within thirty (30) days thereafter shall elect whether it shall purchase and

pay for the special improvements, tools, and equipment, or any part thereof as may be agreed upon, and shall give the Owner notice thereof in writing. In case it shall elect to purchase said property or any part thereof, it shall pay the value thereof as agreed or determined as aforesaid within thirty (30) days thereafter; and upon payment therefor in full the Owner agrees to execute and deliver to the Contractor one or more bills of sale, deeds, or other instruments as shall be necessary in order to convey to the Contractor the Owner's interest in the property so purchased and to discharge or cancel of record any instrument that the Owner shall have theretofore recorded. If the Contractor shall elect not to purchase the special improvements, tools, and equipment, or any part thereof, then the Owner shall have the right to enter upon Contractor's works and remove the same. Any damage done in the removal of said property shall be made good by the Owner. If within one hundred and twenty (120) days from date of notice given to it by the Contractor that it has elected not to purchase any of said property, the Owner shall not have begun the removal thereof, then the Owner shall be deemed to have abandoned said property and thereupon it shall become the property of the Contractor. If the Owner shall begin removal, the work of removal shall be continued with the utmost vigor and dispatch until completed. If the Owner shall not so prosecute such work of removal, then the Contractor may complete such removal at the risk and expense of the Owner.

In so far as possible the Contractor agrees to mark the special improvements, tools, and equipment with signs indicating that such property is that of the United States of America represented by the United States Shipping Board Emergency Fleet Corporation. The Contractor further agrees if requested by the Owner, to execute and deliver to the Owner for recordation by it such deeds or other instruments as shall vest and continue in the Owner the title in or to such property, provided it shall be legally possible under the laws of the State of California.'

Thirty-ninth. Defendant further avers that the terms and provisions of said contracts above referred to are improvident, unreasonable, and unconscionable in the following respects: The moneys so advanced were in fact expended by the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., for the greater part in making permanent and beneficial improvements in and about the said plants. Such improvements included the dredging of channels, the erection of piers and shipways of concrete, and other permanent structures, none of which had or has any salvage value and none of which is capable of removal, so that the terms and provisions contained in the said contracts whereby, under certain circumstances, the defendant was given the right to remove the same are unconscionable and of no benefit whatever to the defendant. On the other hand, defendant avers that the said improvements have been and are of great value to the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., and that the same have been, since the completion of the vessels under the contracts herein alleged, and now are, in

constant use by the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., in its private shipbuilding work. With respect to all such expenditures the amounts of moneys of the United States so advanced constituted a gift to the said plaintiff of the amount so expended, paid without warrant of law, under a mistake of law.

Fortieth. Defendant further avers that the terms and provisions relating to such advances, whereby the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., is given the option of paying the agreed value of the special improvements, tools, and equipment does not impose upon the plaintiff any obligation to pay the United States of America or the defendant, therefor, and that the right which the said contracts purport to give to the United States of America, or its agent the defendant, to enter upon the works and remove the same, is of no benefit or advantage to the United States of America, because the improvements which were made with the said moneys are in their nature, as above stated, either incapable of removal or incapable of removal without destruction of value, all practical value, and the cost of removing the same would greatly exceed any value which the same might have.

Forty-first. Defendant further avers that there has been no appraisal made of the value of such tools and improvements; that the parties have never been able to agree upon any basis for the adjustment of the claim of the United States of America with respect to the amount so advanced; that the amount which the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., should be required to pay to the United States of America or to de-

fendant therefor is the fair and reasonable value of said improvements, tools, and equipment, which defendant avers to be not less than $4,574,163.93, after giving the plaintiff credit for $258,048.58 for profit on account of construction of the Liberty Plant.

Forty-second. After the issuance and service upon the Bethlehem Steel Company, Fore River Shipbuilding Company, Union Iron Works Company, and upon Harlan & Hollingsworth Corporation, and Samuel L. Moore & Sons Corporation of the requisition orders of August 3, 1917 (hereinbefore referred to in the plaintiff's Statement of Claim), and on or about August 22, 1917; the United States of America, under the authority of the said Act of June 15, 1917, through its agency, the defendant, ordered the said respective shipbuilding corporations to complete the ships under construction at their respective yards so requisitioned, upon substantially the same plans and specifications as were provided in the construction contracts between said respective shipbuilding corporations and the purchasers or former owners of the respective ships under construction. These orders were accepted by the respective shipbuilding corporations and subsequently accepted and adopted by the plaintiff Bethlehem Shipbuilding Corporation, Ltd., and the construction of said requisitioned ships was thereupon proceeded with and the ships completed and delivered.

Attached hereto and made a part hereof is a table marked Exhibit F, showing in detail the Hull Numbers, Original Builders, Original Purchasers, Date of Contract, Type of Contract, Type of Vessel, Dead-

weight Tonnage, Date of Builder's Acceptance of Terms of Compensation for Requisition, and Date of any Alteration in any of those Terms, for the vessels which were affected by the said requisition order. The table also indicates the suit or action in which the original contracts referred to therein have already been printed, together with their Exhibit Numbers in said Suit or Action. In order to simplify the record and prevent duplication, the defendant begs leave to refer to said Exhibits by their respective Exhibit Numbers with the same force and effect as though the same were printed in this Affidavit of Defense, Set-off and Counterclaim. Attached hereto and made a part hereof are copies of the requisition order of August 3, 1917, and letter from the defendant to the builders of August 22, 1917, and marked Exhibits G and H respectively. The said order and letter were identical to each builder except for the address. There is also attached hereto and made a part hereof, the replies of the Fore River Shipbuilding Corporation, the Samuel L. Moore & Sons Corporation, Harlan & Hollingsworth Corporation, Bethlehem Steel Company and Union Iron Works to the letter of August 22, 1917, and marked Exhibits I, J, K, L, and M, respectively.

Forty-third. During the construction of the requisitioned ships above mentioned, the defendant, acting for its said principal, the United States of America, made payments, out of the funds of its principal, to the plaintiff, for the cost of construction, for overtime coefficient hereinafter referred to, for wage increases, for overtime bonuses and for profit. There is attached hereto and made a part hereof a schedule marked "Exhibit B" giving in

detail the above payments so described, together with the total credits earned by and total payments made to plaintiff and indicating where the said payments resulted in either an overpayment or an underpayment to the plaintiff.

"Exhibit B" shows that the defendant, in making the payments above described, overpaid the plaintiff, exclusive of overtime coefficient hereinafter referred to, the sum of $373,767.94 made up as follows:

Overpayments on Profit (Column 11)		$396,718.77
Overpayments on Construction (Column 8)		36,607.15
		433,325.92
Underpayments, Wage Increase (Column 9)	$30,450.07	
Underpayments, Overtime Bonus (Column 10)	29,107.91	
		59,557.98
Net Overpayments		373,767.94

The said overpayments were made under mistake of law, without warrant of law and under erroneous construction of the contracts by the disbursing officers of the defendant, with funds of the United States, and were void, unconscionable, and unenforceable for the reasons more specifically set out in Paragraphs Eight to Thirty-seven, inclusive, of this Set-off and Counterclaim.

Forty-fourth. Defendant further avers that prior to the war and prior to the said requisition order of August 3, 1917; the customary hours of labor at the said respective shipyards at which the ships under

construction were so requisitioned had been from nine and one-half to ten hours per day. The contracts under which the said ships were being constructed for private purchasers, or former owners (except three), were on the lump-sum basis and not on the basis of cost plus a percentage for profit, nor were the respective shipbuilding corporations entitled, under such contracts, to additional compensation for overtime work on such construction. In many instances, however, the said shipbuilding corporations, with the purpose and intent and with the result of increasing their profits under contracts with private purchasers, had employed the men overtime and had paid the customary overtime bonus and thereby had advanced the date of completion and delivery of ships so under construction.

Forty-fifth. Defendant further avers that during the war, the United States of America, in furtherance of the war shipbuilding program, directed that, with respect to all shipbuilding work carried on for the Government, eight hours per day should constitute the normal time of employment of labor, and that for all labor employed over eight hours in any day, a bonus of 50% per hour should be paid on the East Coast and a bonus at times of 50% and at other times of 100% should be paid on the West Coast, and that all work on Saturday afternoons, Sundays, and holidays should be deemed to be overtime and that with respect thereto a bonus of 100% per hour should be paid. The basis of compensation for such overtime is commonly known as "time and a half" and "double time," according as the bonus is 50 or 100%. The United States of America had also, through the Shipbuilding Labor Adjustment Board, fixed and adopted a scale of wages for all labor em-

ployed in and about all Government shipbuilding contracts.

Forty-sixth. Defendant further avers that during the period of construction and completion of said requisitioned ships the Bethlehem Shipbuilding Corporation, Ltd., employed the men overtime, but such overtime in excess of eight hours per day did not (except in occasional and rare instances) exceed the normal and customary period of from nine and one-half to ten hours in force prior to the directions referred to in Paragraph Forty-fifth hereof.

Forty-seventh. Defendant further avers that with respect to such overtime, the Bethlehem Shipbuilding Corporation, Ltd., included as part of the additional cost of labor in the statements rendered to the defendant, an amount herein designated for convenience of reference as the "overtime coefficient." Such overtime coefficient was based upon the unwarranted assumption that by employing labor overtime to the extent and in the manner herein set forth, the overhead of the shipbuilder was increased and the efficiency of the labor decreased. By means of a formula adopted by the plaintiff, three separate coefficients were applied to overtime, such coefficients applying respectively to weekday overtime, for which the workman received time and a half, to weekday overtime for which the workman received double time, and for Sunday and holiday overtime, for which the workman received double time. For purposes of illustration the coefficient known as "2.625," applying to weekday overtime for which the workman received time and a half, is set forth herein to show the effect of such coefficient applied to two hours overtime, this effect being to se-

cure to the plaintiff a return of $2.625 for every dollar paid to the workman as overtime bonus. These figures were arrived at on the following basis —the computation for convenience being reduced to units of a dollar:

Shipbuilder pays workmen for overtime of two hours:	
(a) Included in his lump-sum price at rate of $1.00 per hour	$2.00
(b) Charged to defendant as overtime bonus for two hours at 50% of normal rate	1.00
Total paid by shipbuilder to workmen for overtime and bonus	3.00
Shipbuilder receives, under labor coefficient 2.625, the following:	
(1) Overtime bonus, as above	$1.00
(2) Alleged loss in workmen's efficiency 37.5% of normal rate of $1.00 an hour for two hours	0.75
Total of factors (1) and (2)	1.75
(3) For alleged increase in overhead cost and decrease in overhead efficiency 50% of item No. 1 above plus 50% of item No. 2 above	0.875
Total charged by shipbuilder to defendant for each two hours' overtime	$2.625
Total cost paid by shipbuilder as above, for two hours' work	$3.00

Total charged by shipbuilder to defendant for same 2.625

Net cost to shipbuilder for two hours' work $0.375

On week days for which time and a half was paid the plaintiff charged for and received $2.625 for every dollar of overtime bonus paid to the workmen. With respect to labor performed on Sundays and holidays the overtime coefficient upon the amount paid as bonus for overtime, namely, 100% of the normal rate, was 1.25; and all bonus paid for labor on Sundays and holidays was in the statements of account rendered by the Bethlehem Shipbuilding Corporation, Ltd., charged with respect to the overtime coefficient at 1.25 times the amount paid as bonus.

Forty-eighth. Defendant further avers that, in truth and in fact, the Bethlehem Shipbuilding Corporation, Ltd., did not incur any substantial increase in overhead by reason of the overtime work aforesaid. The efficiency of the labor was not thereby decreased and the hours during which the individual laborers were employed were not increased beyond the hours which had been customary in the shipbuilding industry prior to the war. The efficiency of the individual laborers during the period of their overtime employment was no less than the efficiency during the eight hours of their regular employment nor was their efficiency during the eight hours of their regular employment decreased by the fact of their working overtime.

Forty-ninth. Defendant further avers that from time to time the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., included in its statements ren-

dered for compensation for overtime work and expense of labor incurred in and about the completion of said requisitioned ships, items representing labor coefficient computed on the basis hereinabove set forth, and such items were paid by the disbursing officers, under mistakes of law, without warrant of law, and without any authority granted by the United States of America. The total amount of moneys so paid by the defendant upon behalf of the United States of America to the plaintiff on account of labor coefficient is $934,140.11, and is shown, with respect to the several plants herein named in Column 7 of "Exhibit B."

Fiftieth. Defendant further avers that there was no provision in any of the said contracts, either those for the completion of ships requisitioned, or for the building of new ships, whereby the United States of America was required to advance any moneys to the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., as distinguished from reimbursing said plaintiff for construction payments actually made under the terms of said contracts. Nevertheless, on or about the 19th day of April, 1918, at the request of the said plaintiff, the disbursing officers of the defendant, without warrant of law advanced to said plaintiff the sum of Three Million Dollars, and on or about June 12, 1918, the further sum of Five Million Dollars, all out of Government funds. Defendant further avers that both of the said advances, amounting to Eight Million Dollars, were made during the period while Charles M. Schwab was Director General of the Fleet Corporation and exercising control and domination, and standing in the dual relation hereinbefore set forth and that he suffered and permitted said unlawful advances to be made without

in any way attempting to protect the interests of the United States to him entrusted. The said funds amounting to Eight Million Dollars were deposited by said plaintiff in a general account, mingled with other funds and used as working capital, not only in connection with the shipbuilding contracts herein referred to but in connection with its private and general business. It appears from statements furnished by the said plaintiff that the bank in which said fund of Eight Million Dollars was deposited allowed interest thereon and that such bank interest is now held by said plaintiff.

Said sum of Eight Million Dollars so loaned was not repaid in money, but, as each requisitioned ship and certain of the contract ships were completed, a sum of money was credited to the plaintiff on the books of the Fleet Corporation until the total amount of credits equaled the sum of Eight Million Dollars. The defendant avers that the United States of America, or the defendant in its behalf, is entitled to recover the bank interest so allowed, and, in addition, the difference between the same and legal interest at six per cent on the said sum of Eight Million Dollars from the date of the advance and loan thereof to the date of the entry of the said credits. There is attached hereto and made a part hereof, marked "Exhibit E," a tabulation showing the interest computed as above set out and amounting in the aggregate to $498,690.45.

Fifty-first. Defendant further avers that at the time of the negotiations entering into the contract of September 30, 1919, for the construction of Curtis Marine Propelling Equipment, the subject of the plaintiff's Nineteenth Cause of Action, the plaintiff

for the reasons more specifically set out in Paragraphs Ninth to Thirty-seventh of this Set-off and Counterclaim was in a position to estimate approximately, and did so estimate, the cost of construction of said equipment.

Fifty-second. The plaintiff falsely represented to the defendant acting in behalf of its principal, the United States of America, that the sum of $1,661,670 was the fair and reasonable cost of construction of said equipment, together with a fair and reasonable profit for said cost, although at the time it made said representations the plaintiff knew that said sum of $1,661,670 greatly exceeded the cost of construction and would result in grossly excessive, unreasonable, unconscionable, and extortionate profits to the plaintiff.

Fifty-third. The defendant or behalf of its principal relied upon the said representations of said plaintiff and entered into said contract and agreed to pay the plaintiff and did in fact pay the plaintiff the said sum of $1,661,670 for the said equipment, together with other sums for spare parts, aggregating the total sum of $1,702,320.

Fifty-fourth. The said sum of $1,702,320 so paid to the plaintiff yielded to it extortionate, unreasonable and unconscionable profits which amounted to approximately 78 per cent of the cost of construction and no officer of the defendant nor the defendant itself acting for its principal, the United States of America, did or could have had any authority to bind or commit the said principal to any such unreasonable or unconscionable payments, and said payments were wrongfully and unlawfully made to the plaintiff by the defendant in so far as they were

above and beyond a fair and reasonable profit to the plaintiff and constituted overpayments to the plaintiff in the aggregate amount of $656,088.00 and the defendant is entitled to recover for its said principal said sum.

Fifty-fifth. The defendant further avers under the terms of the contracts more specifically enumerated herein in paragraph Thirtieth, the defendant on behalf of the United States and with their funds paid to the plaintiff large sums of money amounting in the aggregate to more than $250,000,000.00 for the construction by the plaintiff of vessels for the United States and for other purposes more particularly stated in said contracts and agreements. In accordance with the terms of said contracts, the plaintiff was required to establish and keep suitable and accurate accounts and records so as to show therein the actual cost of all work done or performed by the plaintiff and the defendant was required at the completion of the work under the practice and laws and regulations of the United States to audit said accounts.

Fifty-sixth. The defendant acting for and on behalf of its principal, the United States, did attempt to audit the accounts of the plaintiff and found that the plaintiff in violation of the terms of said contracts and of its duty and obligation to the defendant and its said principal had failed and neglected to establish or keep suitable accounts or records but, on the contrary, wrongfully and knowingly established and kept unsuitable, misleading and erroneous accounts and records and adopted and applied misleading and erroneous methods and principles for keeping the said cost accounts with the result

that the defendant was forced to reaudit the plaintiff's books and accounts at great expense to the defendant and its principal. As a result of said reaudit, errors and mistakes amounting to millions of dollars were discovered, said mistakes calling for the payment of said millions of dollars by the defendant for its principal to the plaintiff which mistakes were admitted by the plaintiff.

Fifty-seventh. By reason of the plaintiff's failure to keep and maintain said books and accounts in accordance with the terms of the contracts and the custom well known to the plaintiff, the defendant for its said principal was compelled to and did expend the sum of $827,331.13 more than and beyond what it would have been required to expend in the making of said audit had the said accounts of plaintiff been accurately and truthfully kept. The said audit was completed on or about September 1, 1922. The aforesaid amount so expended is now due and owing from the plaintiff to the defendant for its said principal.

Fifty-eighth. Defendant further avers that in the course of constructing ships under the contracts specified in Paragraphs Thirtieth and Forty-second of this Set-off and Counterclaim, the plaintiff has represented to be due and has collected and received from the United States of America and the Disbursing Officers of the Defendant have paid from the funds of the United States of America to said plaintiff without warrant of law, under mistake of law and under erroneous construction of said contracts other amounts in excess of the amounts due and payable under said contracts, the aggregate of the payments so made being $119,432.71. Attached

hereto and made a part of this pleading is Schedule marked Exhibit D showing in detail the items making up the said aggregate amount and, also, showing the amounts overpaid and due from the plaintiff to the defendant's principal as alleged in Paragraphs Fiftieth to Fifty-seventh of this Set-off and Counterclaim.

Fifty-ninth. Defendant further avers that the aggregate amounts of moneys of the United States unlawfully received by the plaintiff, paid without warrant of law, under mistakes of law and otherwise as herein alleged after the allowance of all proper credits is $17,408,024.23. As a result of said payments, there became due from the plaintiff to the defendant's principal, the United States of America, or to defendant, the said sum of $17,408,024.23 and no part of said sum has been paid by the said plaintiff although duly demanded and said sum is now due and owing from the plaintiff, with interest thereon from the 1st day of September, 1922; together with the costs and disbursements of this suit.

Sixtieth. The defendant, without waiving any of its defenses hereinbefore set forth, or any of the averments of the interest and rights of the said United States of America contained therein, but insisting upon them and each of them, avers that in the event the court should determine that the defendant instead of the said United States of America is solely interested in the contracts, transactions, and other matters set forth in the Statement of Claim and this Set-off and Counterclaim, then, and in such event, defendant should recover on its own behalf of the plaintiff the sum of $17,408,024.23, the

sum hereinbefore alleged to be owing by the plaintiff to the defendant's said principal, the United States of America, with interest thereon from the 1st day of September, 1922, together with the costs and disbursements of this suit.

Signed, J. HARRY PHILBIN,
Vice President United States Shipping Board.

Sworn to and subscribed before me this day of , 1927.

Notary Public.

GEORGE W. COLES,
United States Attorney for the Eastern District of Pennsylvania.

HENRY P. BROWN,
Special Assistant to the Attorney General.
JOSEPH J. BROWN,
Special Assistant to the Attorney General.
JAMES TALBERT,
Special Assistant to the Attorney General.
CHAUNCEY G. PARKER,
General Counsel United States Shipping Board Emergency Fleet Corporation.
RALPH H. HALLETT,
Assistant Counsel United States Shipping Board Emergency Fleet Corporation.

Of Counsel.

EXHIBIT A

STATEMENT SHOWING CREDITS TO SHIPBUILDER, PAYMENTS TO SHIPBUILDER, AND RECOVERABLE OVERPAYMENTS TO SHIPBUILDER ON ACCOUNT OF CONSTRUCTION COST, PROFIT, AND HALF SAVINGS ON ALL DIRECT CONTRACT SHIPS, BOTH COMPLETED AND CANCELED

Cause of Action	Contract No.	Shipyard Plant	CREDITS AND PAYMENTS FOR COST — Credits for Construction Cost: Net Cost	Surplus Materials	Total Cost	Payments to Shipbuilder Account of Cost	Recoverable Overpayments to Shipbuilder Account	CREDITS AND PAYMENTS FOR PROFIT: Net Cost—Basis of Profit	Percentage of Cost Conceded as Profit	Credits to Shipbuilder for Profit	Payments to Shipbuilder Account of Profit	Recoverable Overpayments to Shipbuilder on Profit	"HALF SAVINGS": Credit to Shipbuilder	Recoverable Payments to Shipbuilder on "Half Savings"	SUMMARY TOTALS: Grand Total Credits to Shipbuilder	Grand Total Payments to Shipbuilder	Grand Total Recoverable Overpayments to Shipbuilder
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
1st	177	Union	$22,412,491.57	$53,859.63	$22,466,351.20	$22,792,980.96	[illegible]	$22,412,491.57	10%	$2,241,249.16	$2,268,000.00	$26,750.84	.00	$1,980,242.43	$24,707,600.36	$27,041,283.39	$2,333,683.03
2nd	178	Harlan	9,757,562.79	34,452.84	9,792,015.63	9,803,700.22	[illegible]	9,757,562.79	10%	975,756.28	769,500.00	*206,256.28*	.00	613,610.02	10,767,771.91	10,686,810.24	*80,961.67*
3rd	179	Sparrows Pt	5,552,545.07	3,785.34	5,556,330.41	5,657,186.58	[illegible]	5,532,545.07	10%	555,254.51	539,698.90	*15,555.61*	.00	515,223.37	6,111,584.92	6,712,408.85	*600,823.93*
4th	182	Sparrows Pt	11,195,659.89	152,598.37	11,348,258.26	11,495,435.22	[illegible]	11,195,659.89	10%	1,119,565.99	800,000.00	*319,565.99*	.00	.00	12,467,824.25	12,295,435.22	*172,389.03*
5th	183	Fore River	5,287,865.43	19,965.44	5,307,830.87	5,368,867.81	[illegible]	5,287,865.43	10%	528,786.54	499,500.00	*29,286.54*	.00	402,656.25	5,836,617.41	6,270,424.06	*433,806.65*
Not in Claim	184	Moore	6,086,293.48	54,225.65	6,140,519.13	6,543,048.69	[illegible]	6,086,293.48	10%	608,629.35	656,909.92	48,280.57	.00	470,053.70	6,749,148.48	7,670,012.31	920,863.83
6th	191	Union	6,345,388.74	3,869.37	6,349,258.11	6,405,741.11	[illegible]	6,345,388.74	10%	634,538.87	766,260.00	131,721.13	.00	1,100,000.00	6,983,796.98	8,272,001.11	1,288,204.13
7th	196	Sparrows Pt	1,123,782.08	.00	1,123,782.08	1,142,822.60	[illegible]	1,123,782.08	10%	112,378.21	115,400.56	3,022.35	.00	112,666.84	1,236,160.29	1,370,880.00	134,719.71
8th	226	Sparrows Pt	10,891,429.05	13,118.77	10,904,547.82	11,149,326.78	[illegible]	10,891,429.05	10%	1,089,142.91	1,057,500.00	*31,642.91*	.00	837,579.61	11,993,670.73	13,044,406.37	1,050,735.64
9th	230	Union	3,192,236.09	26,433.82	3,218,669.91	3,248,727.48	[illegible]	3,192,236.09	10%	319,223.61	373,500.00	54,276.39	.00	455,000.00	3,537,892.52	4,077,227.48	539,333.96
10th	290	Fore River	4,848,595.35	18,516.22	4,867,111.57	4,897,050.31	[illegible]	4,848,595.35	10%	484,859.54	499,500.00	14,640.46	.00	479,402.75	5,351,971.11	5,875,932.96	523,981.85
11th	300	Sparrows Pt	5,122,587.87	2,465.36	5,125,053.23	5,166,180.02	[illegible]	5,122,587.87	10%	512,258.79	540,000.00	27,741.21	.00	667,860.53	5,637,312.02	6,373,840.55	736,528.53
12th	301	Union*	15,274,468.69	70,363.39	15,344,832.08	15,360,150.17	[illegible]	15,274,468.69	10%	1,527,446.87	1,694,250.00	*166,803.13*	.00	1,744,757.57	16,872,278.95	18,799,157.74	1,926,878.79
12th	301	Union**	699,746.46	.00	699,746.46	814,685.34	[illegible]	699,746.46	10%	69,974.65	26,604.85	*43,369.80*	.00	.00	769,721.11	841,290.19	71,569.08
Not in Claim	312	Sparrows Pt.**	313,594.89	.00	313,594.89	392,387.49	[illegible]	313,594.89	10%	31,359.49	28,471.31	*2,888.18*	.00	.00	344,954.38	420,858.80	75,904.42
13th	313	Moore**	488,192.25	.00	488,192.25	431,564.19	[illegible]	488,192.25	10%	48,819.22	21,402.99	*27,416.23*	.00	.00	537,011.47	452,967.18	*84,044.29*
14th	314	Harlan	13,021,970.30	48,130.79	13,070,101.09	13,172,512.23	[illegible]	13,021,970.30	10%	1,302,197.03	1,038,577.35	*263,619.68*	.00	136,389.98	14,372,299.12	14,347,479.56	*24,818.56*
15th	340	Liberty**	375,000.00	.00	375,000.00	.00	[illegible]	375,000.00	7½%	28,125.00	.00	*28,125.00*	.00	.00	403,125.00	375,000.00	*28,125.00*
16th	465	Sparrows Pt.*	15,071,907.16	152,598.36	15,224,505.52	15,240,199.30	[illegible]	15,071,907.16	10%	1,507,190.72	864,000.00	*643,190.72*	.00	.00	16,731,696.24	16,104,199.30	*627,496.94*
16th	465	Sparrows Pt.**	2,888,648.70	.00	2,888,648.70	2,669,328.70	[illegible]	2,888,648.70	7.6923%	222,203.52	238,112.40	15,908.88	.00	.00	3,110,852.22	2,907,441.10	*203,411.12*
TOTALS			139,949,965.86	654,383.35	140,604,349.21	142,126,875.98	[illegible]	139,949,965.86		13,918,960.26	12,797,488.28	*1,121,471.98*	.00	9,014,655.05	154,523,309.47	163,938,996.41	9,415,686.94

*Completed Ships. **Canceled Ships.

NOTE.—Figures in *italics* represent underpayments to shipbuilder.

EXHIBIT C

Statement Showing Amounts of Set-off and Counterclaim by United States Shipping Board Emergency Fleet Corporation on Account of Advances and Payments for Plant Additions and Improvements

Shipyard Plant	*Amount*
(a) Union (Alameda)	$1,549,848.68
(b) Sparrows Point	2,616,789.71
(c) Sparrows Point	291,143.29
(d) Sparrows Point	33,719.81
(e) Harlan	140,711.02
(f) Home Office Building at South Bethlehem	200,000.00
Gross Total	4,832,212.51
(g) Less fee for profit on construction of Liberty Plant	258,048.58
Net Total	4,574,163.93

EXHIBIT D

Statement Showing Amounts of Set-off and Counterclaim by the United States Shipping Board Emergency Fleet Corporation on Account of Miscellaneous Transactions

Item Designation	*Description*	*Amounts*
(a)	Cost of E. F. C. Audit	$ 827,331.13
(b)	Interest on $8,000,000.00 Advance	498,690.45

Item Designation	*Description*		*Amounts*
(c)	Excessive Profit Paid on Turbine Contract 4989		656,088.00
(d)	E. F. C. Surplus Steel used by Shipbuilder	$33,013.02	
(e)	E. F. C. Plant Material used by Shipbuilder	23,013.96	
(f)	Carfare paid in Error	9,718.52	
(g)	Overhead Charges paid in Error	2,128.87	
(h)	Miscellaneous Accounts Receivable	54,128.34	
(i)	Restoration of Leased Land at Harlan Plant	*2,570.00*	
			119,432.71
	Total		$2,101,542.29

Note—Figures in *italics* represent underpayments to shipbuilder.

IN THE
DISTRICT COURT OF THE UNITED STATES
For the Eastern District of Pennsylvania
No. 11970. December Sessions, 1925

Bethlehem Shipbuilding Corporation, Ltd., Plaintiff,
v.
United States Shipping Board Emergency Fleet Corporation, Defendant

PLAINTIFF'S REPLY TO DEFENDANT'S SET-OFF AND COUNTERCLAIM

(Filed April 4, 1927)

First: Plaintiff admits that defendant is entitled to set off against the amount of plaintiff's claim overpayments in the amount of $75,904.42 under Contract 312 S. C. and in the amount of $211,919.32 under Contract 184 S. C., as set forth in paragraph Thirty-seventh of this reply, and overpayments in the amount of $189,509.20 on account of certain requisitioned vessels at the Moore plant and in the amount of $231,800.20 on account of certain requisitioned vessels at the Harlan plant as set forth in paragraph Fifty-ninth of this reply, which overpayments, totalling $709,133.14; plaintiff admits as a proper credit or set-off against the amount of plaintiff's claim. As is more particularly set forth in said paragraph Fifty-ninth, plaintiff also admits overpayments on account of certain requisitioned vessels at the Fore River plant in the amount of $144,970.08 and on account of certain requisitioned vessels at the Sparrows Point plant in the amount of $12,308.77 and except to the extent that said last mentioned overpayments or any part thereof may be

asserted and allowed as set-off against the claims averred by Fore River Shipbuilding Corporation and Bethlehem Steel Company, respectively, in their respective actions against this defendant, more particularly referred to in said paragraph Fifty-ninth, or as counterclaims against said companies, respectively, plaintiff admits and consents that for said last mentioned overpayments, totaling $157,278.85, credit by way of set-off may be given to the defendant therefor on account of the amount of plaintiff's claim.

Second: Plaintiff repeats and realleges all the allegations heretofore set forth in its statement of claim, and refers to the averments hereinafter contained for a more specific answer to the matters set forth in the affidavit of defense which are realleged as the basis of defendant's set-off and counterclaim. More specifically, plaintiff denies that the defendant acted as agent for the United States of America in connection with the contracts and matters set forth in the statement of claim and in the affidavit of defense and counterclaim; denies that any moneys paid or advanced to plaintiff were so paid or advanced with funds of the United States of America, and on the contrary avers that in all of the transactions between plaintiff and defendant set forth in the statement of claim or in the affidavit of defense and counterclaim, the defendant acted as principal and in its own behalf, and as the real party in interest under and by virtue of its charter powers, and that all moneys paid or advanced to plaintiff by the defendant were so paid or advanced by the defendant from moneys of the defendant or moneys made available to it by the United States of America to be expended by the defendant as other moneys of the defendant were expended. Any ad

mission or any answer hereinafter made regarding any transaction between plaintiff and defendant, wherein it is alleged that the defendant acted as agent for the United States of America, or paid or advanced or expended moneys of the United States of America, is qualified by the denial of such fact or facts as above set forth, with the same effect as if such denial were repeated in every case where such fact or facts are alleged.

Third: Admitted.

Fourth: Admitted.

Fifth: Admitted.

Sixth: Plaintiff denies as to each and every action taken by the defendant, alleged in said set-off and counterclaim, that such action was taken solely by virtue of the power and authority conferred upon the President of the United States in and by the Act referred to in said paragraph Sixth of the set-off and counterclaim, and by the President delegated to the defendant, and for further reply, plaintiff refers to the averments contained in paragraph Second hereof.

Seventh: Plaintiff denies as to each and all of the contracts referred to in the set-off and counterclaim, which were entered into or signed by or in the name of the defendant, that such contracts were made and entered into by it by virtue of power and authority delegated to it as an agency of the United States by the President of the United States, either under the Acts referred to in said paragraph Seventh or otherwise. Plaintiff avers that each and all of said contracts were made and entered into by the defendant, as principal, and as the real party in interest thereunder, and not as the agent of th United States. It avers further that each and every

action taken by the defendant under each and all of such contracts was taken by it as principal, under and by virtue of its charter powers, and as the real party in interest thereunder, and not as the agent of the United States, and that the plaintiff at all times dealt with the defendant thereunder solely on such basis.

Eighth: Plaintiff denies that, either under the Shipping Act of 1916, or otherwise, the defendant was prohibited from entering into any of the contracts therein referred to as principal, or in its corporate or individual capacity, and further denies that under the law existing when said respective contracts were made, the defendant could enter into said contracts only as an agent of the United States of America, as its principal, and for further reply plaintiff refers to the averments contained in paragraphs Sixth and Seventh of this reply.

Ninth: Plaintiff admits that Bethlehem Steel Corporation was incorporated under the laws of the State of New Jersey, on or about December 10, 1904, in connection with the reorganization of United States Shipbuilding Company, but denies that it was incorporated as a reorganization of said Shipbuilding Company. It admits that on or about January 20, 1905, said Bethlehem Steel Corporation acquired the entire capital stocks (except qualifying shares held by the directors thereof) of Bethlehem Steel Company, of Union Iron Works, of Harlan & Hollingsworth Corporation, and of Samuel L. Moore & Sons Corporation, and of certain other corporations. It denies that Bethlehem Steel Company then owned and that it later transfered to Bethlehem Steel Corporation any or all of the capital stock of Fore River Shipbuilding Corporation, or any

or all of the capital stock of Penn-Mary Steel Company. It denies that Bethlehem Steel Corporation assumed control of the above named corporations, or any of them, and further denies that until the organization of the plaintiff, or at any time, it operated the business and plants of said corporations, or any of them, either as departments or divisions of a shipbuilding organization, or otherwise.

Tenth: Plaintiff admits that prior to the transactions between it and the defendant referred to, Penn-Mary Steel Company, a Pennsylvania corporation, and a subsidiary of Bethlehem Steel Company, owned, among other things, the shipbuilding plant at Sparrows Points, Md., which plant was acquired by said Penn-Mary Steel Company from Maryland Steel Company, a Maryland corporation, on or about July 1, 1916 (retroactive to March 1, 1916), and that immediately thereafter, Penn-Mary Steel Company leased said plant, together with certain other properties, to Bethlehem Steel Company, which thereafter, and until on or about November 1, 1917, operated said plant. It admits that prior to February, 1916, said plant had been operated by said Maryland Steel Company, but denies that the entire capital stock of said Maryland Steel Company or any thereof was owned by Penn-Mary Steel Company, and denies that as to any vessels requisitioned, as set forth in said set-off and counterclaim, any contracts for the construction thereof have been made with any other company or companies owned or controlled by Bethlehem Steel Corporation, by or in the name of said Maryland Steel Company. It admits that said Maryland Steel Company was dissolved on or about November 4, 1919, and its assets taken over and its liabilities

assumed by Penn-Mary Steel Company, as of July 1, 1916. Plaintiff admits that prior to the transactions between it and the defendant, referred to in said set-off and counterclaim, and until the acquisition thereof by the plaintiff, Fore River Shipbuilding Corporation owned a shipbuilding plant at Fore River, Massachusetts, which plant is now owned and operated by plaintiff. Plaintiff admits that on or about Jan. 17, 1905, Union Iron Works Company acquired all the properties of Union Iron Works, and that at the time of said transactions with the defendant, said Union Iron Works Company owned the shipbuilding plant which had formerly belonged to said Union Iron Works, but denies that it owned in whole or in part the capital stock of said Union Iron Works. It admits that in 1909 said Union Iron Works Company acquired the capital stock of Union Iron Works Dry Dock Company, a California corporation, and that prior to said transactions with the defendant, and until the operation thereof was taken over by plaintiff, said Union Iron Works Company operated the shipbuilding plant known as the Union Plant, at or near San Francisco, California.

Eleventh: Plaintiff denies that the contracts made with Fore River Shipbuilding Corporation, Bethlehem Steel Company, Union Iron Works Company, Harlan & Hollingsworth Corporation, and Samuel L. Moore & Sons Corporation, respectively, for the completion of the vessels requisitioned while under construction in their respective shipyards, as averred in paragraph Eleventh, were made by the United States of America, and avers that each of said contracts was made by the defendant as principal, and as the real party in interest thereunder, and in its own behalf.

Twelfth: With respect to contracts referred to as having been, on or about October 30, 1917, in force between Samuel L. Moore & Sons Corporation and the United States, plaintiff refers to and reavers the averments contained in paragraph Eleventh of this reply. It admits that during the period of the transactions with the defendant referred to in this action, after about November 1, 1917, the plaintiff operated the shipbuilding plant at Sparrows Point, Md., therein referred to, but denies that since the completion of the vessels constructed in connection with such transactions plaintiff has continually operated or is now operating said shipbuilding plant.

Thirteenth: Plaintiff denies that the leases referred to were made pursuant to any plan for entering into contracts with the United States of America for the construction of steel vessels. With respect to the contracts referred to, for the construction of vessels requisitioned by the requisition order of August 3, 1917, plaintiff refers to and reavers the averments contained in paragraph Eleventh of this reply.

Fourteenth: Admitted, subject to the qualifications stated in paragraph Second.

Fifteenth: Plaintiff admits that at the time of the making of the contracts between plaintiff and the defendant referred to in said set-off and counterclaim, Bethlehem Steel Company, Fore River Shipbuilding Corporation and Union Iron Works Company, and the plaintiff, through its predecessors, Samuel L. Moore & Sons Corporation and Harlan & Hollingsworth Corporation, knew what the cost of building the various types of steel vessels which had prior thereto been built by such respective corporations at their respective plants had been, but

plaintiff denies that either plaintiff or any of said corporations then knew what the cost of constructing such vessels thereafter would be. It denies that the greater part of the steel, fabricated or otherwise, acquired for such shipbuilding operations had been obtained by said shipbuilding companies from Bethlehem Steel Corporation, and avers that by far the greater part of such steel had been obtained by purchase from other producers in which Bethlehem Steel Corporation had no interest. The remaining averments of paragraph fifteenth are admitted, subject to the qualifications stated in paragraph Second.

Sixteenth: Plaintiff denies that it or any of its officers or employees, including Charles M. Schwab, was entirely familiar with or had any special expert knowledge of the actual and probable cost of building the vessels for which it contracted with the defendant, or of estimating the profits to be derived therefrom, or that it or any of its said officers or employees had any better means of acquiring such knowledge or of estimating the probable cost than had the defendant. The conditions at the time of the making of said contracts were such that no person, no matter how experienced, could estimate with anything approaching certainty the probable cost of building vessels of the types and in the quantities specified by said contracts. In the negotiations between plaintiff and defendant leading up to the making of said contracts, the defendant was represented by thoroughly capable, honest and fearless officials and employees, many of whom were thoroughly experienced in shipbuilding and thoroughly familiar with the elements of cost entering directly into ship construction, and such officials and employees repre-

senting the defendant were as competent and capable to estimate the cost of such vessels as the officials and employees of plaintiff.

Seventeenth: Plaintiff denies that any false representations were made by plaintiff with regard to the cost of the vessels to be constructed under the contracts therein referred to, or any of them. It admits that at the time when the negotiations were going on which resulted in the making of the contracts dated December 31, 1917, the wages of labor to be employed on the construction of the ships to be constructed under said contracts at the Union plant of plaintiff, had been fixed for the time being to the knowledge of plaintiff, but it denies that the wages of labor to be employed on the construction of ships to be constructed under said contracts at either Fore River, Moore, Harlan or Sparrows Point plant of plaintiff at said time, either had been, or, so far as plaintiff or its representatives then knew, were about to be fixed by action of the Government. It admits that in November and December, 1917, and at various times thereafter, the Government undertook to fix the rates of wages payable to labor engaged in shipbuilding work for the Government and for the defendant, and that such action of the Government, when taken, was known to the defendant. Plaintiff admits that at the time when the negotiations hereinbefore referred to were carried on, the United States had fixed for the time being, viz., until January 1, 1918, the base price of certain steel products used in shipbuilding, but denies that such fixing of prices covered the prices of all steel products so used, and that the prices which were then fixed were fixed for any period subsequent to January 1, 1918, and further denies that such prices were then intended to be

unchanged throughout the period of ship construction referred to in said paragraph, and denies that there was a well known and recognized price for all steel for such construction. Plaintiff further denies that the United States had at said time fixed transportation costs and that it controlled all other basic industries entering into the production of ships. Plaintiff further denies that at the time of making any of the contracts between plaintiff and the defendant, the costs of labor, or of steel, or any other costs which would enter into the cost of constructing the vessels to be constructed under said contracts respectively, were known to plaintiff, and further denies that such costs could be computed and ascertained by plaintiff. Plaintiff denies that it knew or could, at the time of making the respective contracts, determine the approximate amount and number of hours of labor, or the approximate amount and cost of material, or the amount of any other element of cost which would enter into the construction of the vessels to be constructed under said contracts.

Eighteenth: Plaintiff admits that because of the necessity for constructing vessels to meet the emergencies and requirements of the war, particularly the enormous loss of vessels caused by the unrestricted submarine warfare undertaken by the German Empire, an extraordinary emergency of war existed, and rendered it necessary for the Government to control generally the entire shipbuilding, steel, coal, transportation and certain other industries of the United States, and to obtain as many vessels as it was possible for each shipbuilder of the country to construct, and to have the same constructed in the least possible period of time; and if

admits that these conditions and this emergency were known to the public in general, and to the plaintiff. It avers that such extraordinary emergency and conditions, and the circumstances resulting therefrom, were better known to the defendant than they were to the plaintiff, and, except as so specifically admitted, it denies each and every averment of paragraph Eighteenth.

Nineteenth: Plaintiff admits that on or about December 13, 1917, it stated to the defendant that it was impracticable to estimate within a reasonable percentage what would be the actual cost of constructing vessels which the defendant then requested it to build, and that therefore it was impossible to submit fixed prices for such vessels, except upon a basis so far above estimated cost that any figure acceptable to plaintiff would not be acceptable to the defendant. It admits that thereupon it suggested for the consideration of the defendant that such vessels (except the troop ships subsequently covered by contract No. 182) should be constructed for the defendant on a basis for each such vessel of actual cost plus a fixed fee, with an agreed upon probable cost of such vessel, which should be increased or decreased from time to time by the amounts of any increases or decreases of wages that should be approved by the defendant, and by the net cost of any changes and extras ordered by the defendant, plaintiff to be paid, in addition to the fixed fee, one-half of any saving that might be made below such agreed upon probable cost as so increased or decreased. It denies that the defendant was an agency of the United States of America in respect to the transactions and contracts referred to in said paragraph. It admits

that the contracts between plaintiff and the defendant, referred to in the causes of action numbered First to Third inclusive, and Fifth to Sixteenth inclusive, of its statement of claim herein, were drawn in accordance with such suggestion, but it avers that the form of such contracts was agreed upon between plaintiff and the defendant openly and fairly, and after investigation by competent officials of the defendant of the merits of the various forms and terms of the contracts. It denies that it or its representatives represented that the amounts stated in said contracts as estimated actual cost of the vessels to be constructed were the probable costs, or were in close approximation to what the actual cost thereof would be, and avers that on the contrary, it stated to the defendant that estimates of cost thereof could not be made under the existing conditions, within any reasonable percentage of what would be the actual cost of construction, and further denies that it represented that either the figures proposed by it for insertion in the contracts, or those actually inserted, included any allowance to cover increases in cost which might be caused by any increases in wages over the wage schedule then in effect. It denies that it refused to undertake the construction of the vessels at sums less than those proposed by it, or less than those stated in said contracts. On the contrary, it avers that on or about December 19, 1917, it proposed to the defendant certain figures to be agreed upon as the probable costs to be specified in said contracts, and upon information and belief, that competent officers and employees of the defendant checked such figures against lump sum prices at that time current for similar vessels, and otherwise. That the defendant thereafter proposed to reduce such

figures in every case, and plaintiff agreed to such reductions, and that such figures as so reduced and as so specified in said contracts were agreed upon by plaintiff and the defendant openly and fairly, and without any representation whatsoever on the part of plaintiff with respect thereto. It avers that such contracts, referred to in the causes of action numbered eighth to fourteenth inclusive in the statement of claim herein, insofar as they respectively covered vessels of the same type and size as those to be constructed under the earlier contracts, were replicas of the earlier contracts, except that in each case the fixed fee and the figures of estimated cost were reduced by the defendant in the later contracts, and as to any vessels covered by them which were not of the same type and size as any to be constructed under earlier contracts, plaintiff denies that it made any representations as to the estimated cost of construction thereof, as averred in said paragraph Nineteenth of the set-off and counterclaim.

Twentieth: Plaintiff denies that any representations made by it or its representatives to the defendant were false, and further denies that plaintiff was in a position to know, or that it did know, what would be the approximate cost of constructing said vessels. It denies that the amounts stated in said contracts, or any of them, were known by any representatives of plaintiff to be in excess of any costs which could reasonably be anticipated, and further denies that any estimates or representations made by plaintiff were made for the purpose of enabling plaintiff to derive either excessive, unreasonable or unconscionable profits from said contracts.

Twenty-first: Plaintiff denies that the respective amounts named in said contracts, or any of them,

were objected to by any representatives of the defendant as being excessive and unreasonable, and further denies that said amounts, or any of them, were assented to by the representatives of the defendant because of any assurance given by any representatives of plaintiff that said estimates had been made in good faith, or that they were entirely fair and reasonable, or that they were the lowest sums for which the plaintiff would undertake the work in question. On the contrary, plaintiff avers that during the negotiations with the defendant, preceding the making of said contracts and before the terms thereof were agreed upon, plaintiff offered, both orally and in writing, to the defendant to enter into contracts with it for the construction of said vessels upon such terms as should be determined by the Vice-President and General Manager of the defendant; and that the terms upon which said contracts were made were approved and authorized by the defendant's said Vice-President and General Manager.

Twenty-second: Plaintiff admits that in all of said contracts, except contracts Nos. 182 S. C. and 465 S. C., the fixed fees specified therein respectively were approximately equal to 10% of the estimated cost fixed therein with respect to the respective vessels to be constructed thereunder. It avers that in said contract No. 182 S. C. there was no fixed fee or estimated cost specified, and that in contract No. 465 S. C. the fixed fee provided for amounted to approximately 7.6923% of the estimated cost provided thereunder. The plaintiff denies that the estimated cost specified in any of said contracts was a fictitious estimate of the cost of the vessels to be constructed thereunder, and further denies that the

fixed fees specified in any of said contracts were based upon any fictitious estimates of cost.

Twenty-third: Plaintiff denies that at the time of the execution of said contracts, or any of them, plaintiff was in a position to know, or had any reason to expect that the sum named in the respective contracts as a fixed fee would probably equal or exceed a fair and reasonable profit for the services to be performed under said contracts, and further denies that the terms of said contracts relating to the respective amounts of the estimated cost and "half savings" were insisted upon by plaintiff for the purpose of enabling it to derive either excessive, unreasonable or unconscionable profits from said contracts, or any of them.

Twenty-fourth: Plaintiff is advised that paragraph Twenty-fourth avers a conclusion of law and respectfully submits the same to the Court for its determination.

Twenty-fifth: Plaintiff denies that during the period referred to the United States of America had in other instances fixed and limited the profit to be made by other shipbuilders constructing similar ships under similar circumstances in the vicinity of the various shipbuilding plants operated by plaintiff, at a sum not to exceed 10% of the actual cost, or at a sum less than 10% of actual cost. Plaintiff avers moreover that because of the provisions of the contracts between plaintiff and the defendant, and the circumstances under which such contracts were made, the averment contained in paragraph Twenty-fifth of the set-off and counterclaim is immaterial and irrelevant to the effect that 10% of the actual cost with respect to contracts for building ships of

the type and tonnage of the vessels contracted for, as referred to in said paragraph, is the maximum profit which in fairness and reason, or under any principles of law, a shipbuilder, under the circumstances therein referred to is entitled to receive from the United States of America. Plaintiff, however, denies said averment, in so far as it, or any part thereof, is an averment of fact, and respectfully submits to the Court for its determination any proposition of law averred therein.

Twenty-sixth: Plaintiff admits that Charles M. Schwab was appointed Director General of the Fleet Corporation by resolution of the Trustees of that corporation passed May 16, 1918, such appointment purporting to be effective as of April 11, 1918. Plaintiff denies, however, that said Charles M. Schwab consented to act or acted as such Director General prior to April 16, 1918. Plaintiff denies that during the period from April 11, 1918, until December 12, 1918, or at any other time, said Charles M. Schwab was vested by the defendant with full power and authority to make new contracts for shipbuilding and to modify all then existing contracts for shipbuilding, and to exercise all powers of modification of then existing contracts vested in the President of the United States by the Act of June 15, 1917, and further denies that the powers vested in said Charles M. Schwab as Director General of the Fleet Corporation included the power to require and compel shipbuilding contractors to modify existing contracts by reducing the profits therein covenanted for or otherwise. On the contrary plaintiff avers that by resolution of the Board of Trustees of the Fleet Corporation adopted May 2, 1918, all contracts whether for the Operating or

Construction Divisions, after approval by the Vice-President and Secretary, were required to be submitted to the Board of Trustees for their approval. For further answer plaintiff refers to the averments contained in paragraph Twenty-seventh hereof. Plaintiff further denies that said Charles M. Schwab, acting as Director General, established with respect to other contractors a policy in behalf of the United States of reducing excessive profits under then existing contracts to not over ten per cent. of the actual and reasonable cost of construction, and that with respect to other contractors he limited the profits in contracts to be made to not over ten per cent. of such cost.

Twenty-seventh: Plaintiff denies that at the time said Charles M. Schwab was acting as Director General, he was Chairman of the Board of Directors of plaintiff, Bethlehem Shipbuilding Corporation, Ltd., and on the contrary, avers that prior to accepting the office of Director General, he resigned from the Board of Directors of Bethlehem Shipbuilding Corporation, Ltd., and that during the time that he acted as Director General of the Fleet Corporation he was neither Chairman nor a member of the Board of Directors of Bethlehem Shipbuilding Corporation, Ltd. Plaintiff denies that by virtue of his position or otherwise said Charles M. Schwab was in control of the affairs of Fore River Shipbuilding Corporation, Bethlehem Steel Company, Union Iron Works Company, or of this plaintiff. It admits that during said period said Charles M. Schwab took no action with respect to the contracts between plaintiff and defendant, and further admits that during said period other contracts of like tenor and effect were made between plaintiff and defend-

ant, as will more fully appear by reference to paragraph Thirtieth hereof, and that during such period, payments on account of such contracts were made by the defendant to plaintiff. Said Charles M. Schwab accepted the office of Director General of the Fleet Corporation at the insistent request of the President of the United States to whom, as well as to the officers and trustees of the Fleet Corporation, his connection with plaintiff as well as the fact that plaintiff was then under contract with the defendant to construct ships, was fully known, and because of that fact it was understood and agreed between said Charles M. Schwab and the trustees of the Fleet Corporation, as a condition of his acceptance of said office, that he should have nothing whatever to do with any transactions between the defendant and plaintiff relating either to contracts previously made or to the making of new contracts and such matters were committed to the Vice-President and General Manager of the Fleet Corporation subject to the approval of the Board of Trustees. Plaintiff avers that during said period said Charles M. Schwab took no part, either directly or indirectly, in any transactions between plaintiff and the defendant.

Twenty-eighth: Plaintiff denies that during the period aforesaid said Charles M. Schwab was placed by the Trustees of the defendant in a position of power and authority over all contracts for ship construction, or that he had the right and power to discharge or remove any subordinate official of the defendant who did not carry out his commands or that he was in a position of practical domination over the various officials of the defendant charged with the duty of preparing and executing the contracts referred to. Plaintiff avers that his powers

were specifically limited with respect to any transactions between plaintiff and defendant by the understanding and agreement referred to in paragraph Twenty-seventh, and that said Charles M. Schwab was neither in position to dominate nor did he attempt to dominate or in any way influence the officials of the defendant in preparing, executing and carrying out the contracts with plaintiff. Plaintiff also denies that said Charles M. Schwab had the power to direct the terms on which said contracts should be entered into by and in the name of plaintiff, and further denies that he did in fact direct the terms on which said contracts were entered into. On the contrary, plaintiff avers that said contracts were negotiated by others on behalf of plaintiff and of the defendant respectively without any interference on the part of said Charles M. Schwab.

Twenty-ninth: Plaintiff respectfully submits to the court for its determination the propositions of law therein averred but plaintiff denies in so far as it may be an averment of fact the averment that the defendant at the time therein referred to had the power to require the shipbuilder who had entered into a contract with the defendant, whether made by the defendant in its own behalf or as agent of the United States, to consent to a reduction of the amounts agreed upon in such contract for profits and half-savings or to reduce the profits thereby covenanted to be paid.

Thirtieth: Plaintiff admits that on or about the dates specified therefor in said paragraph, plaintiff and the defendant made and entered into the contracts listed in said paragraph covering the construction by plaintiff for the defendant at the re-

spective plants specified therein of vessels of the number, type, and deadweight carrying capacity specified in said paragraph. Plaintiff admits that the nominal dates of said contracts do not represent the dates on which the formal contracts came into effect, but avers that all of the essential terms of said contracts numbered 177, 178, 179, 182, 183, 184, 191 and 196, dated December 31, 1917, were agreed upon by the parties thereto on or about January 3, 1918, and that similarly, all the essential terms of said contracts numbered 226, 230, 299, 300, 301, 312, 313 and 314 were agreed upon by the parties thereto on March 18, 1918 as to said contract No. 226, on April 22, 1918 as to said contract No. 230, on April 30, 1918 as to said contracts Nos. 299, 300 and 301, and on May 15, 1918 as to said contracts Nos. 312, 313 and 314. Contract No. 465 S. C., dated July 15, 1918, was delivered and took effect subsequent to January 28, 1919. Plaintiff further avers, that all of said contracts dated December 31, 1917, were executed and delivered prior to March 1, 1918. Contracts Nos. 312, 313 and 340 were cancelled. Contracts Nos. 230, 299, 300, 301 and 314 were simply replicas of earlier contracts, except as to the construction of certain cargo vessels under said Contract No. 314 which were different in size and type from any vessels covered by previous contracts, and with the further exception that the fixed fees and estimated costs specified in such later contracts were lower than the fixed fees and estimated costs for similar vessels fixed in such earlier contracts.

Thirty-first: Admitted.

Thirty-second. Admitted, except as to Contracts 182 S. C. and 465 S. C., which contracts differ

from the other contracts as stated in paragraph Thirty-third and in other respects as by reference to said contracts will more fully appear.

Thirty-third: Plaintiff admits that Contracts 182 S. C. and 465 S. C. differed from the other contracts in the particulars stated and in other particulars as by reference to said contracts will more fully appear. Plaintiff respectfully submits to the Court for its determination the proper interpretation of said contracts respecting the amount of profits and compensation on account of savings to which plaintiff is entitled thereunder, and in so far as it may be an averment of fact, plaintiff denies that the provision for half savings in Contract 465 S. C. is unconscionable, void and unenforceable.

Thirty-fourth: Plaintiff denies that the estimated actual cost under Article XIX of any of the contracts referred to in paragraph Thirty-fourth of the set-off and counterclaim is or was incapable of computation, and respectfully submits the proper construction of each of said contracts to the Court for its determination. It admits that at the time of the making and delivery of the contracts referred to in said paragraph and thereafter, there was in effect no wage schedule adopted by the Shipbuilding Labor Adjustment Board in force at any one of the Navy Yards specified in such contracts respectively. It avers, however, that on January 3, 1918, there were wage schedules in force at the respective Navy Yards specified in such contracts, which schedules had been approved by the Navy Yards District Wage Boards; that the defendant had in November and December, 1917, ordered and directed plaintiff to put such schedules into effect in its respective

East Coast plants; that the words 'as adopted by the Federal Adjustment Wage Board' were inserted in such contracts through mutual mistake and error; and that the parties to such contracts in using in Article XIX of each thereof the language which is quoted in said paragraph Thirty-fourth, intended to indicate and specify such wage schedule in force on January 3, 1918 at such respective Navy Yards. It avers further that throughout the performance of such contracts and in making changes in wage schedules, and otherwise in making adjustments and payments under such contracts, the parties hereto mutually adopted and acted upon such intended meaning of such provision. Plaintiff denies that the half-savings clause in any of said contracts is void for uncertainty or for any other reason.

Thirty-fifth: Plaintiff admits that at or near the completion of the vessels built under such cost-plus fixed fee, plus savings contracts, and thereafter, it requested payment from the defendant of the amounts which were not only claimed by it to be due, but which plaintiff avers were actually due to it on account of savings, and it admits that the defendant paid to it an aggregate of $9,014,633.05 on account thereof. It denies that the moneys so paid, or any part thereof, were paid either under mistakes of law, or without warrant of law, or under erroneous construction of the respective contracts, and further denies that the payments so made were made with moneys of the United States.

Thirty-sixth: Admitted, except that plaintiff denies that such payments on account of half savings are recoverable payments to shipbuilder on half savings as stated in the heading of Column 15 of Exhibit A.

Thirty-seventh: Exhibit A, in so far as it purports to show recoverable overpayments to plaintiff on account of profit and half savings, is incorrect in that it does not take proper allowance in accordance with the provisions of the contracts for the compensation payable to plaintiff on account of fixed fees and half savings as provided by the contracts containing such provisions, but is based upon an arbitrary disallowance of the profit fixed by the contracts and the substitution therefor of a fixed percentage of actual cost as defined in the contracts and as admitted by defendant. Plaintiff is therefore advised and avers that Exhibit A, in so far as it purports to show such overpayments, is irrelevant and immaterial. In so far as Exhibit A purports to show cost and overpayments on account of cost, it is incorrect as appears by reference to Exhibit No. 1 hereto attached, showing in detail with respect to each of said contracts the amount payable to plaintiff in accordance with the provisions thereof, on account of vessels constructed and of cancelled vessels under such contracts (not including amounts payable on account of improvements, extensions and construction of plants), the amount heretofore paid, and the amount overpaid or underpaid, as the case may be. As appears from said Exhibit No. 1, plaintiff has received overpayment on account of Contract 312 S. C. to the amount of $75,904.42, and under Contract 184 S. C. to the amount of $211,919.32. Except as so admitted plaintiff denies that it has received any overpayments under said contracts.

Thirty-eighth: Plaintiff denies that the sum of $4,832,212.51, or any part thereof, was advanced by the defendant either as agent or otherwise and that said amount, or any part thereof, was received

by plaintiff to its use. Plaintiff further denies that said sum or any part thereof, was received by plaintiff in any other way or upon any other consideration than as repayment to plaintiff of the cost and expense incurred by it for and at the instance of and for the benefit of the defendant and as agreed and provided for in the contracts hereinafter referred to. Plaintiff admits that in order to provide it with additional facilities with which to expedite the construction of vessels for the defendant, it and the defendant made and entered into contracts which are referred to in the First, Second, Fifteenth and Eighteenth causes of action in plaintiff's statement of claim herein, copies of which contracts are thereto annexed and marked Exhibits 1-A, 1-B, 1-C, 2-A, 2-B, 15, 17, 18-A and 18-B, respectively, to which contracts plaintiff refers for the provisions thereof, and that under and pursuant to the terms of said contracts the defendant paid to plaintiff or upon its order for the work and materials provided and furnished by plaintiff or procured by it to be performed and furnished in accordance with said contracts the respective amounts set forth in Exhibit C annexed to the set-off and counterclaim.

Thirty-ninth: Plaintiff denies that the terms and provisions of said contracts were improvident, unreasonable or unconscionable, or that the amount of money paid or advanced to plaintiff in accordance therewith constituted a gift paid without warrant of law or under a mistake of law. Said moneys were expended for making necessary additions and improvements to the shipbuilding facilities of plaintiff for the purpose of expediting the construction of vessels under the contracts between plaintiff and defendant. It was recognized that such expenditures

would not be necessary in normal times and that upon the termination of the war such additions and improvements would not be required in the conduct of plaintiff's business in normal times; and it denies that said improvements have been and are of great value to plaintiff or that the same have been, since the completion of the vessels under contracts with the defendant, or now are, in constant use by plaintiff in its private shipbuilding work. For further answer, plaintiff refers to paragraphs Fortieth and Forty-first.

Fortieth: Plaintiff avers that the contracts referred to and which are the same contracts mentioned in paragraph Thirty-eighth of this reply speak for themselves as to the terms and provisions thereof, respectively. It denies that the right given under said contracts, respectively, to enter upon the works and remove the special improvements, tools and equipment provided thereunder was, when said respective contracts were entered into and thereafter, of no benefit or advantage to the party entering into said contracts with plaintiff. It denies that said special improvements, tools and equipment were or are incapable of removal or incapable of removal without destruction of all practical value, or that the cost of removing said special improvements, tools and equipment would exceed any value which the same might have.

Forty-first: Plaintiff admits that no determination of the value of the tools and improvements therein referred to has been made as provided in said respective contracts, and avers that the defendant has taken no steps to have such a determination made as provided therein. It admits that plaintiff and the

defendant made no agreement concerning any claim of the United States of America with respect to the funds paid by the defendant on account of said special improvements, tools and equipment. Plaintiff respectfully submits to the court for its determination the propositions of law averred in said paragraph but denies that the fair and reasonable value of said improvements, tools and equipment is $4,574,163.93, or is more than $85,000, to wit: it denies that the value of such improvements, tools and equipment at the Union plant is more than $15,000, that the value of those at the Harlan plant is more than $5,000, that the value of those at the Sparrows Point plant is more than $55,000 and that the value of the office building at South Bethlehem is more than $10,000. Plaintiff avers that after the completion of such improvements and facilities covered by said contracts, it entered into negotiations with the defendant for the purchase from the defendant of such improvements and facilities under and pursuant to the terms and conditions of said contracts; that the defendant at that time and from time to time thereafter made appraisals of the value of such improvements and facilities and communicated the results thereof to plaintiff, who in turn made estimates of the value to it of such improvements and facilities; that thereupon, after long negotiations during which plaintiff was ready and willing to purchase such improvements and facilities at prices which to it at that time seemed reasonable and urged early action on the part of the defendant, in February, 1920, it entered into an agreement with representatives of the defendant for the purchase of such improvements and facilities, but the Board of Trustees of the defendant repudiated the authority of such representatives and repudiated such agree-

ments; that thereafter plaintiff entered into negotiations with the Construction Claims Board of the defendant for the purchase of such improvements and facilities and made an offer of about One million three hundred thousand Dollars ($1,300,000) therefor, which offer such Claims Board transmitted to the Board of Trustees of the defendant with the recommendation that it be accepted, but such Board of Trustees delayed consideration of such offer until plaintiff, in view of changed conditions, withdrew the same; that thereafter and on or about September 15, 1921, plaintiff notified the defendant to remove the greater part of such improvements and facilities and subsequently and in or about July, 1925, again notified the defendant to remove the whole thereof. But the defendant, after said notice of September 15, 1921, requested extensions of time within which to begin the removal of such improvements and facilities and plaintiff from time to time gave extensions of such time so long as negotiations between plaintiff and the defendant for the settlement of other controverted questions between them should be proceeding expeditiously; that the defendant has long since terminated such negotiations and all such extensions of time have long since expired and under the terms and provisions of said contracts all such improvements and facilities have been abandoned to plaintiff.

Forty-second: Plaintiff admits that on or about August 22, 1917, the defendant issued to Bethlehem Steel Company, Fore River Shipbuilding Corporation, Union Iron Works Company, Harlan & Hollingsworth Corporation and Samuel L. Moore & Sons Corporation orders for the completion by said companies for the defendant of the vessels which

had been requisitioned at their respective shipyards by the orders of August 3, 1917, substantially in accordance with the plans and specifications provided by the original contracts for such vessels between said respective companies and the purchasers or former owners thereof, and offers to said respective companies to compensate them therefor by the payment to them of the amounts specified in such original contracts then unpaid, which orders and offers were in each case, except as to the name and address of the addressee therein named and the shipbuilding company and plant referred to therein, in the same form and terms as Exhibit H attached to said set-off and counterclaim; that said orders and offers were accepted by said respective shipbuilding companies and that such acceptance by them respectively is evidenced in part by the letters of which copies are attached to said set-off and counterclaim and marked Exhibits I, J, K, L and M, respectively. It admits that the vessels which are enumerated by reference to their respective hull numbers in Exhibit F attached to the set-off and counterclaim were completed and delivered, except hulls 450 and 451, and that the completion thereof was taken over and as to all except said hulls 450 and 451 was carried out, by the plaintiff in the manner and under the circumstances averred in the Twenty-first to Twenty-fourth causes of action, inclusive, in the statement of claim herein and in the statements of claim in the three other actions against the defendant pending in this court wherein Union Iron Works Company, Bethlehem Steel Company and Fore River Shipbuilding Corporation, respectively, are plaintiffs, said actions being Nos. 11972, 11974 and 11976, respectively, December sessions, 1925. Plaintiff admits and avers that the completion thereof was

under and pursuant to the aforesaid agreements entered into with the defendant except to the extent that said agreements were changed as averred in said respective statements of claim. Such of said agreements as were changed with respect to the basis of payment to plaintiff for the completion of the respective vessels completed thereunder are also indicated in the last column of said Exhibit F. Plaintiff avers that the defendant made said agreements as the principal and the real party in interest thereunder and that the respective shipbuilding companies with which said agreements were made and plaintiff at all times dealt with the defendant thereunder solely on such basis.

Plaintiff denies the averment in paragraph Forty-second of the set-off and counterclaim that the dates set forth in said Exhibit F in the column headed "Date of Acceptance of Terms of Completion" show the dates of the builders' acceptance of terms of compensation for the requisition of the respective vessels and avers that the vessels when requisitioned were not the property of the respective shipbuilders but of the various owners for whom they were being built, except as to the interest of the shipbuilder therein on account of and to the extent of its labor and materials expended thereon which then remained unpaid for; that compensation for the requisitioning of said vessels was due to and, as plaintiff avers upon information and belief, was made to said respective owners and not to the shipbuilders, except as to the amounts unpaid to the shipbuilders for labor and materials expended thereon or obtained therefor prior to the requisition order, which amounts were merged in the payments agreed to be

made by the defendant to said respective shipbuilders for the completion of said vessels.

Forty-third: Plaintiff admits that the defendant made payments to plaintiff on account of the completion of the requisitioned vessels referred to in the column marked (2) of Exhibit B attached to said set-off and counterclaim in the aggregate amounts, respectively, which are set forth in the column marked (4) of said Exhibit B. Plaintiff denies that in making said payments or any of them the defendant acted for the United States of America and denies that said payments or any of them were made out of the funds of the United States. Plaintiff denies as to each of said requisitioned vessels that Exhibit B shows the amount of total credit earned by the shipbuilder for the construction thereof, and further denies that overpayments with respect to any of them were made to plaintiff in the respective amounts set forth in the column marked (6) of said Exhibit B or in any of the amounts set forth in the columns marked (7), (8), (9), (10), (11) and (12) thereof. Plaintiff attaches hereto marked Exhibit 2 a statement of the amounts which became due to plaintiff for the construction of said requisitioned vessels and shows in the last column thereof by the figures printed therein in italics the amount of any overpayment made to plaintiff on account of any of said vessels. Plaintiff denies that any overpayments were made to it on account thereof in excess of the respective amounts shown therein. Said exhibit also shows the requisitioned vessels upon which there are amounts still due and unpaid to the shipbuilders as averred in plaintiff's statement of claim herein and in the respective statements of claim in said three other actions pending.

in this court hereinbefore referred to. Plaintiff denies that the defendant has made overpayments to plaintiff with respect to all of said requisitioned vessels taken together in the sum of $373,767.94 as averred in said paragraph Forty-third, or in any other amount whatsoever, and avers that there is due and unpaid on account of the completion of said requisitioned vessels the sum of $656,539.98 as shown in said Exhibit 2 hereto attached.

Forty-fourth: Plaintiff denies that either at the beginning of the war and prior thereto or at any time between the beginning of the war and the issuing of the requisition order of August 3, 1917, the customary hours of labor at the shipyards at which said vessels were requisitioned were from 9½ to 10 hours per day and avers that the customary hours of labor at the Fore River, Moore and Union plants were 8 hours per day, and at Harlan and Sparrows Point plants 9¼ hours per day. It admits that the contracts under which the vessels requisitioned were being constructed for private purchasers (except 3) were on a lump sum basis and not on the basis of cost plus a percentage for profit and that the respective shipbuilding corporations were not entitled under such contracts, in the absence of special agreements with respect thereto with the owners for whom the vessels were under construction, to additional compensation for overtime work on such construction. It avers that as to some of said vessels at the time of the requisition thereof negotiations were in progress with such owners for the employment of overtime work in the construction thereof and for the payment by such owners of compensation to the shipbuilder determined by the application to the amount of over-

time bonus paid for direct labor on such vessels of the same overtime coefficient as is hereinafter referred to. It denies that said shipbuilding corporations had in any instances, except such customary instances of temporary emergency or necessity as may have arisen in the ordinary course of the work, employed overtime labor in the construction of the vessels in the absence of such special agreement with the owner for compensation therefor.

Forty-fifth: Plaintiff admits that during the war the Government in furtherance of the war shipbuilding program directed that with respect to all shipbuilding work carried on for the Government and for the Fleet Corporation eight hours a day should constitute a normal time for employment of labor and that for all labor employed over eight hours a bonus at times of 50% and at other times of 100% should be paid and that all work on Saturday afternoons, Sundays and holidays should be deemed to be overtime and that with respect thereto a bonus of 100% per hour should be paid and it admits that the basis of compensation for such overtime is commonly known as "time and a half" and "double time" according as the bonus is 50% or 100%.

Forty-sixth: Plaintiff admits that during the period of construction and completion of the requisitioned vessels subsequent to said requisition order the respective shipbuilders, including plaintiff, employed overtime labor in the construction thereof. It denies the averment that such overtime in excess of eight hours per day did not (except in occasional and rare instances) exceed the normal and customary period of labor in force prior to the directions referred to in paragraph Forty-fifth of

the set-off and counterclaim and further denies that such normal and customary period was from 9½ to 10 hours, but on the contrary avers that it was as averred in paragraph Forty-fourth hereof.

Forty-seventh: Plaintiff avers that the amounts included in the statements rendered by it to the defendant for compensation on account of overtime work were arrived at by applying to the amount of overtime bonus paid to the workmen directly engaged in the construction of the vessels various coefficients and that the defendant had agreed to pay the amounts so arrived at in consideration of the employment of overtime labor on such vessels by agreements in writing. Said agreements are contained in letters which passed between the shipbuilders and the defendant, copies of which marked Exhibits 3 to 14, inclusive, are hereto attached and made a part of this reply. Plaintiff denies that said coefficients or any of them were based on any unwarranted assumption as averred in paragraph Forty-seventh. It denies that, as averred in said paragraph, the payment of the overtime coefficient of 2.625 resulted in payment to it of $2.625 for every dollar paid to the workmen for overtime bonus. It avers that in addition to the amount of overtime bonus paid to workmen directly employed in the construction of the vessels said shipbuilders paid bonus for overtime also to their workmen who were employed in the operation of the respective plants and whose wages were not charged as direct labor on any of said vessels but became a part of their overhead expense. The overtime coefficient in each case was paid as compensation to the shipbuilder for the amount of overtime bonus so paid to others than workmen directly employed on the vessels as well

as for the increase in other overhead expenses and the loss resulting to the shipbuilders from decreased efficiency of the workmen during the overtime hours of employment. It avers that the various overtime coefficients which were adopted and applied to the overtime bonus paid for direct labor and which the defendant agreed to pay were arrived at as follows (the computations for convenience being reduced to units of a dollar):

"Time and a Half"

Shipbuilder pays workmen for overtime of two hours:

(a) At regular rate of $1 per hour (The shipbuilder is not reimbursed payments under (a) except to the extent that they are covered by lump sum prices.)	$2.00
(b) As overtime bonus for two hours at 50% of regular rate (reimbursed by Fleet Corporation)	1.00
Total paid by shipbuilder to workmen for overtime and bonus	$3.00

Shipbuilder receives from the Fleet Corporation under coefficient of 2.625, the following:

(1) Overtime bonus, as above	$1.00
(2) Loss in workmen's efficiency 3/8 of normal rate of $1 an hour for two hours	.75
Total of factors (1) and (2)	$1.75
(3) For increase in overhead cost and decrease in overhead efficiency 50% of	

item No. 1 above plus 50% of item No. 2 above	.875
Total charged by shipbuilder to the Fleet Corporation for each two hours' overtime	$2.625

"Double Time"

Shipbuilder pays workmen for overtime of one hour:

(a) At rate of $1 per hour	$1.00
(b) Bonus paid double time per hour	1.00
Total paid by shipbuilder to workmen for overtime and bonus	$2.00

Shipbuilder receives under coefficient of 1.8125, the following:

(1) Overtime bonus, as above	$1.00
(2) Loss in workmen's efficiency 3/8 per hour	.375
(3) *Increased overhead 50% (1/2 hour plus 1/8 of an hour)	.4375
Total	$1.8125

*The increased cost of overhead is figured on one-half of the actual number of overtime hours worked.

"Double Time on Sundays and Holidays"

Shipbuilder pays for each one hour overtime bonus of $1.00

No loss in efficiency.
* Increased overhead 50% of one-half hour .25

$1.25

* The increased cost of overhead is figured on one-half of the actual number of overtime hours worked.

Plaintiff avers that in the charges to the defendant for overtime work said respective coefficients were applied only to the amount of overtime bonus paid to the workmen directly employed in the construction of the respective vessels.

Forty-eighth: Plaintiff denies that it did not incur any substantial increase in overhead by reason of the overtime work, and avers that its overhead expense, both by reason of overtime bonus paid to its workmen who were engaged in the operation of its plants but not directly employed in the construction of particular vessels, and in other respects, was materially increased thereby over what would have been the overhead expense in performing the same amount of work in the normal operation of the plants during the regular hours of employment. It denies that the efficiency of the labor was not thereby decreased and that the hours during which the individual laborers were employed were not increased beyond the hours which had been customary in the shipbuilding industry prior to the war. It denies that the efficiency of the individual laborers during the period of their overtime employment was no less than the efficiency during the eight hours of their regular employment.

Forty-ninth: Plaintiff admits that from time to time it included in its statements to the defendant on account of the overtime coefficients the amounts specified in the column of Exhibit 2 hereto attached bearing the heading "Overtime Coefficient" and that payments on account of said amounts were made by the defendant and are included in the amounts set forth in the column of said Exhibit 2 bearing the heading "Total Payments to Shipbuilders". It denies that the amounts so paid or any part thereof were paid either under mistakes of law, without warranty of law, or without authority therefor. It admits that the amounts so included by plaintiff in its statements to the Fleet Corporation on account of overtime coefficient over and above the amount of overtime bonus paid to workmen directly employed in the construction of the vessels amounted to $934,140.11. Plaintiff denies that the payments made by the defendant on account thereof were made on behalf of the United States of America.

Fiftieth: Plaintiff admits that there were no provisions in any of the contracts referred to in paragraph Fiftieth whereby the United States of America was required to advance any moneys to plaintiff as distinguished from the making of reimbursement by the defendant to plaintiff for payments on account of the cost of construction of the vessels and of plant improvements thereunder. It admits that on or about April 24 and June 14, 1918, the defendant advanced to plaintiff $3,000,000 and $5,000,000, respectively, amounting in the aggregate to $8,000,000, but denies that said advances were made out of Government funds. It admits that said advances were made during the period when Charles M.

Schwab was acting as Director General of the defendant and avers that said Charles M. Schwab took no part whatever in the negotiations between plaintiff and the defendant with respect to such advances or either of them and that he in no way took part in or influenced the making thereof. With respect to the averments in paragraph Fiftieth concerning the exercising of control and domination by said Charles M. Schwab and his standing in an alleged dual relationship, plaintiff refers to and repeats the denials and averments in paragraphs Twenty-sixth, Twenty-seventh and Twenty-eighth of this reply. Plaintiff admits that the $8,000,000 so advanced to it by the defendant was deposited by plaintiff in general accounts, mingled with its other funds and used as working capital in connection with contracts between plaintiff and the defendant referred to in the set-off and counterclaim. It denies that any part thereof was used in carrying on its private and general business. It admits that it collected from the banks in which such funds were deposited interest on its daily balances. It avers that such advances were made by the defendant to enable plaintiff to expedite the construction of vessels then under construction by plaintiff for the defendant upon the understanding and agreement that the repayment of such advances should be effected by the deduction from time to time from amounts due from the defendant to plaintiff on account of the construction of such vessels of amounts aggregating the amounts of such advances but without any agreement on the part of plaintiff to pay any interest on account of such advances. Plaintiff admits and avers that such advances were repaid to the defendant in such manner by deducting from moneys due and owing from

the defendant to plaintiff on account of the construction of such vessels the amounts set forth in Exhibit E attached to the set-off and counterclaim in the columns thereof bearing the heading "Payments". Plaintiff denies that either the United States or the defendant is entitled to recover either the bank interest allowed or the difference between the same and interest at 6 per cent. as averred in said paragraph Fiftieth. It avers that at the time of such repayments the defendant did not make any claim or demand for the payment of any interest on account of such advances but accepted repayment as aforesaid in complete satisfaction of the obligation of plaintiff on account of such advances.

Fifty-first: Plaintiff admits that before it submitted its bid for the construction of Curtis marine propelling equipment covered by the contract of September 30, 1919, which is the subject of plaintiff's Nineteenth cause of action in its statement of claim herein, plaintiff made an estimate of the cost of constructing and furnishing said equipment and avers that such estimate was made carefully and honestly and according to the best information available to plaintiff as to the probable cost thereof.

Fifty-second: Prior to May 17, 1919, the defendant requested not less than eight of the principal manufacturers in the United States of Marine turbine engines and equipments to submit to it bids for the construction and furnishing, in accordance with the specifications of the defendant therefor, of marine turbine equipments, together with certain specified spare parts and accessories therefor, for eight ships, requiring two units of such equipment for each ship, with alternative bids for like equipment

for lesser numbers of ships. Pursuant to such request plaintiff on or about May 16, 1919, submitted to the defendant its bid for the construction and furnishing of such turbine equipments and spares, which bid for such equipments for six ships, the number thereof for which the contract with plaintiff of September 30, 1919, was subsequently made, was in the amount of $1,573,320 with the additional sum of $39,000 for the spare parts required to be furnished therewith. At or about the same time bids for similar equipment were received by the defendant pursuant to such request from seven other bidders, including the principal manufacturers of such equipment in the United States. All the bids so received were opened by the defendant on May 17, 1919, and the bid so submitted by plaintiff for said equipments for six ships, as well as plaintiff's alternative bids for such equipments for greater and lesser numbers of ships, was substantially lower than any bid submitted by any of said other bidders.

Thereafter, and before said contract of September 30, 1919, was entered into, certain changes were made in the materials of which certain parts of said equipments were to be constructed, whereby the cost of constructing the same would be increased, and the price to be paid to plaintiff for the construction and furnishing of said equipments for six ships and the spare parts therefor was thereupon fixed by agreement between plaintiff and the defendant at the sum of $1,702,320, of which $1,661,670 was to be paid for said equipments and $40,650 for the spare parts to be furnished therewith. Said contract of September 30, 1919, was thereupon entered into be-

tween plaintiff and the defendant for said sum so agreed upon.

Said bid so submitted by it on May 16, 1919, was based upon plaintiff's estimate, carefully and honestly made and according to the best information available to plaintiff, of the probable cost of constructing and furnishing said equipments and spare parts; and of the expense to be incurred in connection with the installation and testing thereof, together with a reasonable allowance to cover contingencies and profit.

Plaintiff denies that, apart from the submitting of its bid therefor in competition with other bidders as aforesaid, it made any representations to the defendant with respect to the probable cost of construction of said equipments or plaintiff's estimate thereof or with respect to the amount of the percentage over plaintiff's estimate of the cost which was included in said bid to cover prospective profit to plaintiff. Plaintiff denies that it made any false representations to the defendant either with respect to its estimate as to the cost of construction of said equipments, or the prospective profit to be derived by plaintiff therefrom, or in connection with the increases over the price bid by plaintiff which were agreed to before the contract was drawn and entered into as hereinbefore averred.

Plaintiff denies that at any time at or before the date when said contract was entered into it knew that said sum of $1,661,670 was in excess of the probable cost of construction by any greater sum than would yield a reasonable profit to plaintiff and denies that at any such time plaintiff knew that said price for said equipments would result in either

excessive, unreasonable, unconscionable or extortionate profits to plaintiff, and further denies that either excessive, unreasonable, unconscionable or extortionate profits have resulted or will result to plaintiff from the performance of said contract.

Fifty-third: Plaintiff denies that in entering into said contract the defendant relied upon representations of plaintiff as averred in paragraph Fifty-third. It denies that the defendant has paid to plaintiff either said sum of $1,661,670 for said equipments or the sum of $1,702,320 for said equipments and the spare parts therefor furnished by plaintiff under said contract, and avers that of said last named amount there is due and unpaid to plaintiff from the defendant the sum of $90,019.55 with interest thereon from the first day of February, 1921, as is averred by plaintiff in the Nineteenth cause of action in its statement of claim herein.

Fifty-fourth: Plaintiff denies that either the amount paid to it under said contract or said sum of $1,702,320 when fully paid to plaintiff has yielded or will yield to it either extortionate, unreasonable or unconscionable profits and further denies that the profits either derived or to be derived by plaintiff from the payment to it of said amount as provided in said contract have amounted or will amount either actually or approximately to 78% of the cost of construction of the equipments and spares furnished by plaintiff under said contract.

Fifty-fifth: Plaintiff admits that the defendant has paid to plaintiff on account of the contracts referred to large sums of money, the exact amount of which as to each of said contracts, except contracts

184 and 312, is more particularly averred in plaintiff's statement of claim herein. It denies that the sums so paid have amounted to as much as $250,000,000 or to any greater amount than the aggregate of said amounts averred to have been paid on account of said contracts in said statement of claim and, as to said contracts 184 and 312, in the Thirty-seventh paragraph of this reply. It further denies that said payments or any part thereof were made by the defendant on behalf of the United States or with funds of the United States. It admits that each of said contracts, except contract 340 S. C., in Article XVI thereof, and that said contract 340 S. C., in Article XIX thereof, required plaintiff to establish and keep suitable accounts and records which should show the actual cost of all the work under the contract but plaintiff avers that said contracts speak for themselves as to the requirements thereof concerning the keeping of accounts and records of cost and refers to the provisions of said contracts as attached to and made a part of its statement of claim herein and in particular to said Article XVI thereof with respect to all said contracts except contract 340 S. C. and in the case of that contract to Article XIX thereof. Plaintiff further admits that under each of said contracts, except contract 340 S. C., by Article XIX thereof the defendant was required upon the completion of each vessel to make a complete audit of the cost thereof and denies that under any practice or laws or regulations other than said provisions of said contracts was the defendant required to audit plaintiff's accounts with respect thereto.

Fifty-sixth: Plaintiff admits that after the completion of said contracts the defendant made an au-

dit of plaintiff's accounts both with respect to the cost of the vessels constructed under said contracts and with respect to the various elements entering into the revision of the estimated cost as provided therein. It denies that in making the audit the defendant acted for and on behalf of the United States. It denies that plaintiff had either failed or neglected to establish or keep suitable accounts and records and denies that it either wrongfully or knowingly or otherwise established and kept either unsuitable, misleading or erroneous accounts and records. It denies that it either adopted or applied either misleading or erroneous methods or principles for keeping the cost accounts and denies that the defendant was forced to re-audit plaintiff's books and accounts by reason of any improper keeping of accounts by plaintiff. It denies that errors and mistakes were found in plaintiff's accounts and records amounting to any substantial sum whatsoever and further denies that mistakes such as are averred in paragraph Fifty-sixth were admitted by plaintiff. Plaintiff avers that its accounts with respect to the vessels constructed and other work done under its contracts with the defendant and all its other accounts which the defendant was required to, or did, audit, were kept under the supervision and direction of the defendant and that said accounts were audited currently by the auditors of the defendant as the construction work covered thereby proceeded, and that the charges billed to the defendant from said accounts were billed with the approval of, and after checking by, its said auditors; that after the completion of said contracts by plaintiff a complete audit of plaintiff's accounts with respect thereto was made by the defendant and that on such final audit

various disputes arose regarding certain items of overhead expense and certain other elements of cost incurred by plaintiff and properly entered upon its books of account, as to whether such items and elements of cost were chargeable as cost under the provisions of said contracts, some of which disputed charges have been waived by plaintiff, but plaintiff avers that the entries thereof and of all other items entered on plaintiff's books of account were properly and accurately made and that the entry thereof was necessary to the keeping of full, complete and accurate accounts of plaintiff's business and transactions.

Fifty-seventh: Plaintiff admits that the defendant's audit of its accounts was completed on or about September 1, 1922. It denies that its accounts were not accurately and truthfully kept, and that by reason thereof defendant was compelled to or did expend the sum of $827,331.13 or any sum whatever and for further answer refers to and reavers the averments contained in paragraph Fifty-sixth of this reply.

Fifty-eighth: Plaintiff denies that either the defendant or its disbursing officers or the United States of America has paid to plaintiff either the whole or any part of the sum of $119,432.71 as alleged and further denies, as to the items set forth in Exhibit D attached to the set-off and counterclaim and therein averred to be the items making up said aggregate amount of $119,432.71, that said items or any of them therein set forth have been paid to plaintiff either in whole or in part. Plaintiff further denies that the amounts set forth in said Exhibit D purporting to represent overpayments

due from plaintiff to defendant or to the United States of America as alleged in paragraphs Fiftieth and Fifty-seventh of the set-off and counterclaim have in fact been overpaid or that the same or any part thereof are due either to defendant or to the United States of America, for the reasons set forth in the respective answers to said paragraphs.

Fifty-ninth: In its reply to paragraph Thirty-seventh of the set-off and counterclaim in the Thirty-seventh paragraph of this reply plaintiff has admitted overpayments to it on account of contract 312 S. C. in the amount of $75,904.42 and under contract 184 S. C. in the amount of $211,919.32, amounting together to $287,823.74 and has admitted that to the extent of said overpayments the defendant is entitled to credit on account of the amount claimed by plaintiff in its statement of claim herein.

In its reply to paragraph Forty-third of the set-off and counterclaim in the Forty-third paragraph of this reply and in Exhibit 2 hereto annexed and therein referred to, plaintiff has admitted overpayments to it on account of requisitioned vessels other than those referred to in its statement of claim herein and in the statements of claim in the three other actions against the defendant pending in this court, hereinbefore referred to, wherein Union Iron Works Company, Bethlehem Steel Company and Fore River Shipbuilding Corporation, respectively, are plaintiffs, which overpayments are in said Forty-third paragraph of this reply and said Exhibit 2 admitted to have been made on account of the following named vessels constructed at the following named plants and in the following amounts:

Hull No.	*Shipyard*	*Amount of Overpayment*	
264, 265, 267	Fore River	$370.93	
268, 269	" "	47,331.38	
272, 273	" "	97,267.77	
	Total at Fore River		$144,970.08
115, 116	Moore	101,333.42	
117	"	88,175.78	
	Total at Moore		$189,509.20
445	Harlan	44,608.81	
453, 454, 455, 456	"	122,958.59	
457, 458	"	64,232.80	
	Total at Harlan		$231,800.20
172	Sparrows Point	4,884.84	
173	" "	7,423.93	
	Total at Sparrows Point		$ 12,308.77
	TOTAL		$578,588.25

Except to the extent that said overpayments on requisitioned vessels at the Fore River plant or any part thereof may be asserted and allowed as set-off against the claim averred by said Fore River Shipbuilding Corporation in its said statement of claim against this defendant or as counterclaim against said Fore River Shipbuilding Corporation, and except further to the extent that said overpayments on requisitioned vessels at the Sparrows Point plant of any part thereof may be asserted and allowed as set-off against the claim averred by Bethlehem Steel Company in its said statement of claim against this defendant or as counterclaim against said Bethlehem Steel Company, plaintiff admits and consents that credit by way of set-off may be given to the defendant, to the amount of said overpayments on requisitioned vessels so admitted, on account of plaintiff's claim in its statement of claim herein.

Plaintiff denies that payments made to it by the defendant were made out of moneys of the United

States and except for said overpayments so admitted plaintiff denies that it has received on account of any matters referred to in the set-off and counterclaim any overpayments or that any sum whatsoever has been improperly paid to plaintiff either without warrant of law or under mistakes of law or otherwise, and further denies that by reason of any or all of the matters set forth in the set-off and counterclaim any amount whatsoever has become due from plaintiff either to the defendant or to the United States of America.

CHARLES SINKLER,
RALPH B. EVANS,
Attorneys for Plaintiff.

State of Pennsylvania,
County of Northampton, ss:

Robert E. McMath, being duly sworn according to law, deposes and says that he is the Secretary of Bethlehem Shipbuilding Corporation, Ltd., the plaintiff named in the foregoing reply; that he has read the same and is familiar with the facts set forth therein and is authorized to make this affidavit on behalf of the plaintiff corporation; that the facts set forth in said reply so far as they have been made of his own knowledge are true and so far as made on information derived from others he is informed and verily believes them to be true and the plaintiff corporation expects to be able to prove the same at the trial of the case.

ROBERT E. McMATH.

Sworn to and subscribed before me this 23rd day of March, 1927.

G. F. Sellers,
Notary Public.

Commission expires Jan. 22, 1929.

EXHIBIT 1.

THE CONTRACT SHIP PROGRAM

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q
Contract No.	Estimated cost specified in the contracts	Increase in wages to be added to estimated cost	Net cost of changes and extras to be added to or subtracted from estimated cost	Estimated cost specified in contracts revised in accordance therewith B+C+D	Actual cost determined in accordance with contracts	Surplus or deficit	Actual cost for purpose of determining savings on completed ships or in case of contract 182 profit F−G	Contractor's portion of savings—50% of E−H or in case of contract 465 the maximum specified in contract	Fixed fees specified in or calculated in accordance with contracts	AMOUNTS PAID BY FLEET CORPORATION ON ACCOUNT OF			AMOUNTS DUE FROM AND UNPAID BY FLEET CORPORATION ON ACCOUNT OF			Aggregate amount due from and unpaid by Fleet Corporation (exclusive of damages) N+O+P
										Actual cost	Fixed fees or profit	Savings	Actual cost F−K	Fixed fees or profit I−L	Savings I−M	
177	$25,440,000.00	$2,508,502.11	$ 60,495.28	$ 28,008,997.39	$22,469,2[illegible]	$53,859.63	$22,415,384.22	$2,796,806.58	$2,520,000.00	$ 22,792,960.96	$ 2,268,000.00	$ 1,980,242.43	$325,717.11	$252,000.00	$816,564.15	$744,847.04
178	8,886,000.00	1,331,183.17	188,959.00	10,406,142.17	9,993,37[illegible]	34,452.84	9,958,922.42	223,609.87	855,000.00	9,803,700.22	769,500.00	113,610.02	189,675.04	85,500.00	109,999.85	385,174.89
179	6,210,000.00	851,436.38	24,328.00	7,085,764.38	5,556,33[illegible]	3,785.34	5,552,545.07	766,609.65	600,000.00	5,657,186.58	539,998.90	515,223.37	100,856.27	60,001.10	251,386.28	210,531.21
182	.....	.....	.....	.....	11,354,28[illegible]	152,598.37	11,201,659.89	.....	1,120,165.99	11,495,435.22	800,000.00	.....	141,176.96	320,165.99	.....	178,989.03
183	5,595,000.00	776,639.20	12,791.00	6,358,848.20	5,314,44[illegible]	10,965.44	5,294,483.22	532,182.49	555,000.00	5,368,867.81	499,500.00	402,050.25	54,419.15	55,500.00	130,126.24	131,207.09
184	5,860,000.00	993,934.80	525,876.24	7,379,811.04	6,142,10[illegible]	54,225.65	6,087,923.65	645,943.69	670,000.00	6,543,048.69	656,909.92	470,053.79	100,599.39	13,090.08	175,889.99	211,919.32
191	8,514,000.00	621,947.17	103,760.52	9,239,707.69	6,354,16[illegible]	3,969.37	6,350,294.16	1,444,706.76	851,400.00	6,405,741.11	766,260.00	1,100,000.00	51,577.58	85,140.00	344,706.76	378,269.18
196	1,295,000.00	132,318.73	5,949.11	1,433,258.84	1,123,78[illegible]	.....	1,123,782.08	154,738.38	129,500.00	1,142,822.60	115,400.56	112,656.84	19,040.52	14,099.44	42,081.54	37,140.46
226	11,885,000.00	1,969,148.85	124,402.00	13,978,550.85	10,904,54[illegible]	13,118.77	10,891,429.05	1,543,560.90	1,175,000.00	11,149,326.76	1,057,500.00	837,579.61	244,778.94	117,500.00	705,981.29	578,702.35
230	4,150,000.00	336,221.90	17,604.00	4,503,826.10	3,219,61[illegible]	25,438.82	3,193,183.48	655,321.31	415,000.00	3,248,727.48	373,500.00	455,000.00	20,110.18	41,500.00	200,321.31	212,711.13
299	5,550,000.00	635,349.36	10,581.00	6,174,768.36	4,873,95[illegible]	18,516.22	4,855,441.24	659,663.56	555,000.00	4,897,050.21	499,500.00	479,402.75	23,092.75	55,500.00	180,260.81	212,608.06
300	6,000,000.00	899,911.67	41,039.00	6,940,950.67	5,125,05[illegible]	2,465.36	5,122,587.87	909,181.40	600,000.00	5,166,180.02	540,000.00	667,660.53	41,126.79	60,000.00	241,520.87	260,394.08
301*	18,825,000.00	1,531,967.62	46,532.03	20,403,499.65	15,346,57[illegible]	70,343.39	15,276,508.34	2,563,495.65	1,882,500.00	15,360,150.17	1,694,250.00	1,744,757.57	13,278.44	188,250.00	818,738.08	993,709.64
301**	.....	.....	.....	.....	699,74[illegible]	.....	.....	.....	69,974.65	814,685.34	26,604.85	.....	114,938.83	43,369.80	.....	71,569.03
312**	.....	.....	.....	.....	313,59[illegible]	.....	.....	.....	31,359.49	392,387.49	28,471.31	.....	25,792.60	2,888.18	.....	75,904.42
313**	.....	.....	.....	.....	488,19[illegible]	.....	.....	.....	48,819.22	431,564.19	21,402.09	.....	56,628.06	27,416.23	.....	84,044.29
314	11,540,000.00	2,511,201.61	333,100.50	14,384,302.11	13,073,88[illegible]	48,130.79	13,025,714.67	679,293.72	1,154,000.00	13,172,512.23	1,038,577.35	136,389.98	98,666.77	115,422.65	442,903.74	559,659.62
340**	.....	.....	.....	.....	375,00[illegible]	.....	.....	.....	28,125.00	375,000.00	.....	.....	.....	28,125.00	.....	28,125.00
465*	12,480,000.00	1,509,178.80	3,198,003.20	16,999,201.38 (1)	15,233,91[illegible]	152,598.36	15,080,915.38	600,000.00	1,200,000.00	15,240,199.30	864,000.00	.....	6,685.58	342,000.00	600,000.00	935,314.44
465**	.....	.....	.....	.....	3,033,88[illegible]	.....	.....	.....	233,375.69	2,569,328.70	238,112.40	.....	364,558.29	4,736.71	.....	359,821.58
				$153,297,628.83	$140,995,57[illegible]	954,383.35	$135,430,774.74	$14,175,113.96	$14,200,220.04	$142,126,875.08	$12,797,488.28	$9,014,633.05	$1,133,296.54	$1,902,731.76	$5,160,480.91	$5,931,916.24

*Completed Ships. ** Canceled Ships.

(1) After deducting $187,980.68 on account of decreases in prices of materials and increases in freight rates.

Note—Figures in italics are deductions or overpayments as the case may be

EXHIBIT 2.

THE REQUISITIONED SHIP PROGRAM

Hull No.	Shipyard	Amount Which Became Payable by the Former Owners and/or Fleet Corporation to the Original Shipbuilders and/or the Plaintiff on Account of: Contract Price or Cost	Changes and Extras	Overtime Coefficient	Increased Wages	Excess Deadweight Tonnage	Supplies Left on Board on Delivery	Profit on Cost Plus Contracts	Total	Total Payments to Shipbuilders	Balance Due (Figures in italics represent overpayments)
264-265-266	Fore River	$3,821,525.53*						$346,560.00	$4,168,085.53	$4,168,456.46	*$370.93*
268-269	"	2,200,000.00	$117,419.92	$222,306.80	$352,511.26		$3,955.35		2,896,193.33	2,943,524.71	*47,331.38*
272-273	"	2,820,000.00	271,381.68	86,218.60	481,400.45	$16,000.00			3,575,000.73	3,672,268.50	*97,267.77*
297-298	"	4,938,766.07*						771,025.45	5,709,791.52	5,669,020.74	*40,770.78*
115-116	Moore	1,700,000.00	113,646.23	93,716.36	241,741.34				2,149,104.43	2,250,437.85	*101,333.42*
117	"	1,981,767.43*						594,530.23	2,576,297.66	2,664,473.44	*88,175.78*
442	Harlan	875,753.88*						81,000.00	956,753.88	939,824.01	*16,929.87*
445	"	1,888,082.28*						119,070.00	2,007,152.28	2,051,761.09	*44,608.81*
446	"	1,617,222.68*						81,000.00	1,698,222.68	1,694,713.52	*3,509.16*
449	"	1,700,285.53*						81,000.00	1,781,285.53	1,724,622.89	*56,662.64*
453-454-455-456	"	2,487,772.00	242,224.50	337,604.78	337,243.40				3,404,844.68	3,527,803.27	*122,958.59*
457-458	"	1,678,500.00	62,132.72	53,593.24	391,032.27		2,925.00		2,188,183.23	2,252,416.03	*64,232.80*
450-451	"	77,332.97*						7,733.30	85,066.27	80,173.61	*4,892.66*
163	Sparrows Point	730,000.00	55,570.00						785,570.00	785,570.00	
167	"	922,500.00	68,876.37						991,376.37	991,376.37	
169	"	1,332,000.00	79,501.00	85,331.39	246,017.32	24,660.00	156.00		1,767,665.71	1,602,032.57	165,633.14
170	"	1,332,000.00	82,907.00	77,892.83	312,570.45	24,660.00	260.00		1,829,590.28	1,656,159.86	173,430.42
172	"	1,735,895.00	47,878.63	113,953.58	113,745.40				2,011,472.62	2,016,357.46	*4,884.84*
173	"	1,290,000.00	117,715.00	89,693.69	96,988.43	23,564.00	120.00		1,618,081.12	1,625,505.05	*7,423.93*
174	"	1,909,020.00	114,623.00	60,864.87	478,328.39	56,880.00	560.00		2,620,276.26	2372,906.51	247,369.75
175	"	1,909,020.00	114,640.00	36,595.00	513,328.53	56,880.00	196.00		2,630,659.53	2,351,090.72	279,568.81
134-135	Union	2,961,817.91*						299,500.00	3,261,317.91	3,260,884.91	433.00
140	"	1,050,000.00	22,330.97				1,429.67		1,073,760.64	1,073,496.89	*263.75*
142	"	1,800,000.00	21,427.60						1,821,427.60	1,821,427.60	
143-144	"	2,700,000.00	106,350.00	29,051.25	191,310.13		1,156.80		3,027,868.24	3,014,790.21	13,078.04
145-146	"	2,700,000.00	132,857.50	33,278.58	230,878.47				3,097,014.55	3,072,799.71	24,214.79
147	"	2,500,000.00	115,639.82	44,532.97	268,519.89				2,928,692.70	2,910,629.58	18,063.12
148-149	"	3,000,000.00	101,522.32	74,716.50	395,375.10		115.00		3,571,728.92	3,546,096.97	25,631.95
154	"	775,000.00	98,839.77	10,436.14	86,290.40				970,566.31	966,682.26	3,884.05
162-169	"	15,420,000.00	1,457,297.61	423,741.62	2,658,692.41		7,825.37		19,966,757.01	19,805,964.71	160,792.30
		$71,754,261.28	$3,544,782.20	$1,872,828.21	$7,395,973.64	$202,644.00	$17,899.19	$2,381,418.98	$87,169,807.52	$86,513,267.54	$656,539.98

*Cost.

EXHIBIT 3.

(Letterhead of)
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION
Boston

Aug. 21, 1917.

Fore River Shipbuilding Co.,
Quincy, Mass.

Attention of Mr. J. W. Powell.

Gentlemen:

Speeding Up of Requisitioned Ships.

You are hereby authorized to speed up the construction of hulls Nos. 268-269, now under construction in your yard, and requisitioned by the U. S. Shipping Board on Aug. 3, 1917.

This speeding up of construction will be in accordance with your letters dated July 5, 1917, and August 1, 1917, to the Pan American Petroleum & Transport Co., 120 Broadway, New York, copies of which are on file in this office.

I request that you acknowledge receipt of this communication and that you write a letter to this office properly covering this matter as outlined in the letters above mentioned.

Yours very truly,

W. H. Hand, Jr.
District Officer.

W. H. Hand, Jr./L.

EXHIBIT 4.

(Letterhead of)
FORE RIVER SHIPBUILDING CORPORATION

July 5, 1917.

Pan American Petroleum & Transport Co.,
120 Broadway,
New York, N. Y.

Attention of Mr. J. S. Wood, Vice-President.

Gentlemen:

Referring to our conversation last week on the subject of speeding up construction of Hulls 268 and 269, there is detailed below the plan of operations which was arranged with the Texas Company to expedite the delivery of their last two ships, one of which was delivered last Sunday, 22 days after launching and the second of which is due for delivery this month.

This Company worked as many men as practicable on these vessels in two shifts, one day and one night. The day shift worked 10 hours five days per week and 6 hours on Saturday, a total of 56 hours per week. The night shift worked 11½ hours each night for five nights per week, or 57½ hours per week. Work beyond these hours, or on Sundays or holidays was limited to the smallest amount practicable. The regular working hours of this plant are 8 hours per day and work beyond that number of hours is paid for on weekdays at the rate of time

and a half and on Sundays and holidays, all time is paid for at the rate of double the actual hours worked.

Under its agreement with the Texas Company this Company worked its men on the Texas Company's ships 10 hours per day, for which Fore River Company paid. In addition the men drew one hour's overtime (that is, ½ of the total number of hours worked beyond 8 hours) so that the men were paid for 11 hours. The Texas Company paid for this extra hour. Because of the longer hours worked, it was figured that the actual value of the man was only an equivalent of 9¼ hours, so that the Texas Company paid for this loss of efficiency ¾ of an hour, a total paid by the Texas Company for actual overtime hours and loss of efficiency of 1.75 hours for each 2 hours overtime actually worked. The regular overhead charge of this Company is 65%. It was figured that the corresponding overhead charge on the 1.75 hours paid for by the Texas Company should be only 50%, making a total paid by the Texas Company of 1.75 plus 50% of 1.75 equal to 2.625 hours for each two hours overtime worked by an employee of this Company.

It is estimated that a similar arrangement for Hulls 268 and 269 would increase the cost of the vessels about $50,000 each and would advance the delivery dates approximately two months each.

It would appear to this Company that a similar arrangement to the above for expediting the delivery of Hulls 268 and 269 is worthy of your earnest consideration and any further information

that you may desire in reference thereto will be gladly furnished.

Very truly yours,

FORE RIVER SHIPBUILDING CORPORATION

By J. W. POWELL,
President.

EXHIBIT 5.

(Letterhead of)
FORE RIVER SHIPBUILDING CORPORATION

August 1st, 1917.

Petroleum Transport Co.,
120 Broadway,
New York, N. Y.

Gentlemen:

Attention of Mr. J. S. Wood, Vice-President.

Referring to conference with your Mr. Wood in his office yesterday, the 31st ultimo, in reference to expediting the delivery of your vessels, namely, our Hulls 268 and 269 respectively, we have considered the items discussed in this conference and beg to advise as follows:

On July 5th, 1917, we wrote you explaining the arrangement made with the Texas Company in which the bonus for overtime together with the estimated loss in efficiency and overhead expense was accepted and paid for by them and suggest that a similar arrangement to the above for expediting the delivery of your vessels would be worthy of your earnest consideration.

On July 6th, 1917, your Company replied to the above letter advising us that your Company was willing to entertain such a proposition, providing that the delivery of the vessels be expedited two months for each ship, to effect the delivery of Hull

268 by November 15th and Hull 269 by December 15th.

As regards the above dates of delivery, we beg to advise that our program of construction was interfered with by work for the United States Government. This interference delayed the laying of the keel for Hull 268 by thirty days and Hull 269 by ninety days. The keel for Hull 268 was laid June 27th, 1917, and work on this vessel is proceeding rapidly. The keel for Hull 269 is scheduled for laying down about September 15th, 1917, which date will be met providing this Company does not receive instructions from the Government to use the slip for other purposes. We are however, of the opinion that no such instructions will be issued.

Under normal conditions of work we estimate that it will take 8½ months from the laying of the keel to the date of completion for each vessel. This period of time would bring the delivery for Hull 268 about February 12th, 1918, and for Hull 269 about June 1, 1918.

Under the conditions of operations set forth in our letter of the 5th ultimo, we estimate that a saving in time of construction would amount to 2½ months for each vessel. This would bring the estimated dates of delivery for Hull 268 about the end of November, 1917, and for Hull 269 about the middle of March, 1918. In any event under the conditions of operation as outlined, your company will secure these vessels at least 2½ months earlier than working under normal conditions of hours established at our plant.

We, of course, cannot guarantee the delivery on the dates given above, but feel justified in stating

that in accordance with our best judgment, after having given careful analysis of the existing or probable conditions, your company can feel reasonably sure of obtaining the deliveries of these vessels on or before the dates for expeditious delivery herein given.

We would respectfully request that your company give this subject earliest possible attention and authorize us to proceed on the basis outlined for the expeditious delivery, since we believe that such an arrangement would be mutually beneficial to our respective companies.

Yours very truly,

FORE RIVER SHIPBUILDING CORPORATION

By J. W. POWELL,
President.

EXHIBIT 6.

(Letterhead of)
SAMUEL L. MOORE & SONS CORPORATION
Elizabeth, N. J.

November 6th, 1917.
FC:S

United States Shipping Board,
Emergency Fleet Corporation,
Washington, D. C.

Sirs: *Attention Admiral F. T. Bowles.*

To expedite the completion of our Hulls 115 and 116, commandeered by your Corporation on August 3rd, 1917, also requisitioned as per your letter of October 17th, we respectfully request your official authorization to work overtime on these vessels until completed. The expense incurred thereby to be paid us as an extra on the following basis:

All overtime to include direct and indirect labor employed in the actual construction of the vessels as well as in the manufacture of the parts and equipment belonging thereto.

Our regular working schedule, under normal conditions, is eight hours per day, or forty-eight hours per week. In the Shipyard the overtime rates are double time, while in the balance of the Plant the overtime rates are time and one half. The rates for Sundays and Holidays are double time throughout the Plant.

Employees working on schedule piecework receive time and one half or double time, as the case may be, for their work after eight hours work (similar to premium paid day workers). This increased price shall be derived by taking the total amount earned at schedule price for the full period worked and dividing this by the hours worked, thus obtaining the hourly earnings. The premium is paid on this basis.

The additional amount over regular rates paid for overtime is one half times or once times the rates according to whether the rate is one and one-half or double time, as previously described. The above, together with loss in efficiency and overhead expense amount to 2.625 times the additional expense.

We respectfully submit this rate of 2.625 times the additional expense as a fair and equitable basis for overtime charges.

The overhead expense figured in the above does not include depreciation, administration, selling or like expenses, nor has consideration been given to the loss in efficiency due to working night shift. This latter condition will be the subject of further communication.

Respectfully

SAMUEL L. MOORE & SONS CORPORATION

By: FRED CONLIN,
President.

(2 copies sent District
Officer C. S. Bookwalter)

EXHIBIT 7.

(Letterhead of)
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION
Washington

November 8, 1917.

Samuel L. Moore and Sons Corporation,
Elizabeth, N. J.

Gentlemen:

In Re: Overtime on Requisitioned Hulls.

Receipt is acknowledged of your letter of November 6, 1917, stating the charges you will make for overtime.

You are authorized to employ overtime to expedite the completion of your Hulls No. 115 and 116, and, for the present, this overtime will be limited by the hours of daylight.

The basis of payment submitted by you, that is, the extra cost of the overtime multiplied by 2.625 is approved. Vouchers may be submitted in accordance therewith.

Very truly yours,

F. T. BOWLES,
Manager, Division of Construction.

EXHIBIT 8.

(Letterhead of)
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION
Washington

Dec. 8, 1917.

Mr. Henry O. Trowbridge,
Custom House,
Boston, Mass.

Dear Sir:

Re: Overtime on Requisitioned Ships.

In order to expedite the completion of all steel ships, contract and requisitioned, you will authorize the shipbuilders to work overtime on the basis outlined below. The basis will apply to lump sum contracts only, as any increase in the case of cost plus contracts is taken care of automatically. The amount of overtime which you will authorize will be left to your own discretion. In general, however, it should be limited on hull construction to the hours of daylight, while on shopwork this limit need not apply.

Granting that there may be an increase in overhead equal to the normal rate when working overtime, there is an unabsorbed amount of overhead if materially less than the total number of men employed work overtime. On the other hand, if the plant is working overtime at practical capacity, all overhead is absorbed. You should keep informed

of the conditions at each plant, and in submitting figures for overtime, you should state the average proportion of the total labor employed by that plant which is worked overtime.

The overhead charge to be allowed shall be the rate determined monthly by apportioning the total of the overhead for the month, exclusive of the extra on account of overtime, over the total labor cost for the month exclusive of overtime. In no case shall it exceed 50%.

1. Overtime for which Time and a Half is Paid.

The Corporation will pay the amount of the bonus plus a factor to cover loss of efficiency plus an item for overhead. The loss in efficiency will be considered as ⅜ of the regular pay for the first three hours overtime, and one-half for all in excess of three hours. No charge for lost efficiency will be allowed for less than two hours overtime. The item for overhead will be figured on the sum of the other two charges.

2. Overtime after the Normal Day for which Double Time is Paid.

The Corporation will pay the amount of the bonus plus a factor to cover loss of efficiency plus an item for overhead. Loss in efficiency will be considered as ⅜ or the regular rate of pay for the first three hours overtime and ½ for all in excess of three hours. No charge for lost efficiency will be allowed for less than two hours overtime. The item for overhead will be applied to the charge for loss in efficiency and one-half only of the total bonus paid.

You will note that the amount of overhead charged for this overtime will be the same as that for an equal amount of overtime worked on the time and a half basis.

3. Overtime on Sundays and Holidays for which Double Time is Paid.

The Corporation will pay the bonus plus an item for overhead. This item for overhead will be applied to one-half only—of the bonus paid. This charge shall apply to the first eight hours so worked, and further hours to be charged for the same as in section No. 2.

In order to provide for the payment of overtime authorized, you will instruct the shipbuilders to submit vouchers at monthly intervals for the overtime worked on each hull.

The Corporation has now under advisement the subject of lost efficiency on a night shift for which the Corporation may be liable. This will be made the subject of a later letter.

These instructions supersede all former authorizations for overtime.

Very truly yours,

F. T. Bowles,
Manager,
Division of Construction.

EXHIBIT 9.

(Letterhead of)
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION
San Francisco

November 24, 1917.

Mr. Jos. J. Tynan, General Manager,
Bethlehem Shipbuilding Corporation, Ltd.,
Union Plant, 20th & Michigan Streets,
San Francisco, Cal.

Dear Sir:

Overtime on Requisitioned Vessels.

This will acknowledge receipt of your favor of the 15th instant wherein you quote the factor to be charged this Corporation in working overtime when so directed.

The proposition under the head of "Union Plant —Basis of Charges", wherein you stated the factor to be charged would be 2.625 times the additional expense or wage paid to the men, which would cover the loss in efficiency, overhead expense and profit, and would be the only additional charge to this Corporation for such overtime work.

The above proposal was put forward to the Corporation, who authorize the overtime work at your yard on the above basis, said work to be at the discretion of this office with the understanding that the

work is to be done in the daylight hours or in the early part of the evening.

When you consider overtime will materially advance the delivery of the ships, I will be pleased to have you take this matter up thru our Chief Inspector Chisholm, and if then seems advisable to us, we will instruct you to work overtime.

Yours very truly.

A. F. PILLSBURY,
District Officer.

EXHIBIT 10.

(Letterhead of)
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION
Baltimore, Maryland

December 18, 1917.

Bethlehem Shipbuilding Corporation,
Harlan Plant,
Wilmington, Del.

Gentlemen:

In re: Overtime.

Enclosed please find copy of the basis upon which the Emergency Fleet Corporation are prepared to allow for charges for overtime on requisitioned vessels.

Yours faithfully,

GEO. R. McDERMOTT,
District Officer.

GRMcD-R
Enclosure.

(Letterhead of)
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION
Baltimore, Maryland

December 18, 1917.

Overtime on Requisitioned Ships.

1. Overtime for which Time and a Half is Paid.

The Corporation will pay the amount of the bonus plus a factor to cover loss of efficiency plus an item for overhead. The loss in efficiency will be considered as 3/8 of the regular pay for the first three hours overtime, and 1/2 for all in excess of three hours. No charge for lost efficiency will be allowed for less than two hours overtime. The item for overhead will be figured on the sum of the other two charges.

2. Overtime after the Normal Day for which Double Time is Paid.

The Corporation will pay the amount of the bonus plus a factor to cover loss of efficiency plus an item for overhead. Loss in efficiency will be considered as 3/8 of the regular rate of pay for the first three hours overtime and 1/2 for all in excess of three hours. No charge for lost efficiency will be allowed for less than two hours overtime. The item for overhead will be applied to the charge for loss in efficiency and one half only of the total bonus paid.

You will note that the amount of overhead charged for this overtime will be the same as that for an equal amount of overtime worked on the time and a half basis.

3. Overtime on Sundays and Holidays for which Double Time is Paid.

The Corporation will pay the bonus plus an item for overhead. This item for overhead will be applied to one-half only, of the bonus paid. This charge shall apply to the first eight hours so worked, any further hours to be charged for the same as in Section No. 2.

The overhead charge to be allowed shall be the rate determined monthly by apportioning the total of the overhead for the month, exclusive of the extra on account of overtime, over the total labor cost for the month exclusive of overtime; in no case shall it exceed 50%.

EXHIBIT 11.

(Letterhead of)
BETHLEHEM SHIPBUILDING CORPORATION, LTD.

December 20th, 1917.

Emergency Fleet Corporation,
Washington, D. C.

Gentlemen:

Attention of Rear Admiral F. T. Bowles

With reference to letter of the 18th instant from the District Officer at Baltimore, Md., in connection with overtime on requisitioned vessels at the Harlan Plant of the Bethlehem Shipbuilding Corporation, Ltd., the Emergency Fleet Corporation has already approved for overtime at the Fore River and Moore Plants of this Company, a basis of 2.625 times the overtime hours, for a settlement for such overtime. The method proposed in the enclosure accompanying the above mentioned letter is very difficult to apply and is not more accurate than that in effect at the other two Yards, and it is requested that the same overtime rate, namely, 2.625 times the actual bonus hours paid for overtime, be accepted for all of the Plants of this Company.

Respectfully,

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

By J. W. POWELL,
Vice-President.

EXHIBIT 12.

(Letterhead of)
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION
Washington

December 22, 1917.

Bethlehem Shipbuilding Corporation,
South Bethlehem, Pa.

Attention: Mr. Powell.

Gentlemen:

Re: Payment for Overtime—Requisitioned Vessels Building at Harlan & Hollingsworth Plant.

Reference is made to your letter of December 20, 1917, relative to payment for overtime at the Harlan plant. I understand that in conversation with Mr. Prior, you claim it was inadvisable during the winter months to make two hours overtime, especially on outside work, and that it would be very difficult to segregate overtime paid for at time and a half rate and that paid for at double time rate.

I also understand that Mr. Prior suggested that you write a letter bringing these facts out for our consideration, as to whether or not we should make an exception in the case of Bethlehem's plants, as regards paying for overtime.

As the above reference letter does not cover the case sufficiently for me to give consideration as to

whether or not our last instructions should be modified, so far as the Bethlehem plants are concerned, I would be pleased to hear from you further in the premises. In this connection, it should be noted that our last instructions supersede any previous instructions or authorization covering the payment by the Corporation for overtime.

Very truly yours,

F. T. Bowles,
Manager, Division of Steel Ship Construction.

EXHIBIT 13.

(Letterhead of)
BETHLEHEM SHIPBUILDING CORPORATION, LTD.

December 31st, 1917.

Admiral F. T. Bowles,
Mgr. Division of Steel Ship Construction,
Emergency Fleet Corporation,
Washington, D. C.

Dear Sir:

The Emergency Fleet Corporation's letter of the 22nd inst. refers to the payment of overtime at the Harlan Plant in connection with requisitioned vessels and states that this Company's letter of the 20th inst. does not cover the case in sufficient detail to permit of its further consideration. Considering the Emergency Fleet Corporation's letter of December 8th to the District Officer, the method of computing payment for overtime there requires the following:

1. The determination of the overhead each month, although what is to be taken as overhead is not specified, but an arbitrary figure of 50% which must not be exceeded is included as part of this item. In one of this Company's Yards the overhead for the month of November amounted to 120%.

2. In connection with overtime for which time and one-half is paid, no loss of efficiency is provided for less than 2 hours; three-eighths of the overtime period is allowed for the first three hours and one-half for time in excess of three hours. This requires treating of each employee's overtime hours separately, depending on the number of hours he has worked and as an accounting problem means the expenditure of time and labor with no commensurately accurate result. The figures of no loss, 3/8th and 50% losses respectively for the different times worked are purely arbitrary and cannot be supported by any facts. It is equally as accurate to assume one percentage loss for any overtime hours, which from the accounting standpoint is much simpler to handle.

3. The treatment of employees' overtime hours in the case of double time weekdays and for Sundays and holidays requires the same separate treatment for each man. The assumption of the single percentage taking on the average account of all these various factors is equally accurate and far simpler from the accounting standpoint.

The system previously approved for the Fore River Shipbuilding Corporation, Union Iron Works and Moores of paying 2.625 times the overtime hours allowed is simpler, equally accurate and in the long run will not produce a materially different result.

The enormous demands for data from various sources have so overloaded the Accounting Depart-

ment that anything that throws a further load on them is a matter of serious concern and where, as in the present case, we believe there is no substantial gain; it appears to us extremely desirable that the methods applied should be of the simplest.

Very truly yours,

BETHLEHEM SHIPBUILDING CORPORATION, LTD.,

By J. W. POWELL,
Vice-President.

EXHIBIT 14.

(Letterhead of)
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION
Washington

January 11, 1918.

Bethlehem Shipbuilding Corporation,
South Bethlehem, Pa.

Attention Mr. J. W. Powell, V. P.

Dear Sir:

Re: Overtime Payment.

Receipt is acknowledged of your letter of December 31, 1917.

Due to the considerations advanced both in your letter and in the interview with your Mr. Hill, the Corporation will allow for the present 2.625 times the overtime bonus in all of your plants with the exception of Samuel L. Moore & Sons' plant.

The Corporation understands that Samuel L. Moore & Sons pay double time for overtime, therefore the coefficient for this plant will be 1.8125 times the overtime bonus paid employees. This coefficient is derived as follows:

Overtime at double time—	
Bonus paid	1.0000
Loss in efficiency, 3/8 of the regular rate	.3750

Overhead, 50% of (½ bonus paid plus loss efficiency)	.4375
Coefficient	1.8125

You will note that your reimbursement for loss in efficiency and overtime in actual dollars and cents will be the same under either of the above coefficients.

The above coefficients will apply only under existing conditions. In the event that the overtime rate is changed in any of your plants you will notify the Corporation and a new coefficient will be determined.

Very truly yours,

F. T. Bowles,
Manager Division of Steel Ship Construction.

APPEARANCE

(Filed Feb. 18, 1926)

Enter our appearance for Bethlehem Shipbuilding Corporation, Ltd., the Plaintiff in the above entitled case.

CHARLES SINKLER,
RALPH B. EVANS,
Attorneys for Plaintiff.

To the Clerk of the Said Court:

February 17, 1926.

AGREEMENT OF REFERENCE

(Filed May 1, 1928)

IT IS HEREBY STIPULATED AND AGREED between the parties to the above entitled suit, acting through their respective attorneys, as follows:

1. A trial by jury is hereby waived and it is agreed that the issues of fact in this case may be tried and determined by the Court without the intervention of a jury, pursuant to R. S. Section 649 as supplemented and amended, and that review thereof may be had as authorized by R. S. Section 700 as supplemented and amended.

2. The case shall be submitted to the decision of Owen J. Roberts, Esq., as referee, to hear and determine the issues and report his findings of fact in the form of special findings, and his conclusions of law to the Court in accordance with the practice and procedure obtaining in the Courts of the Commonwealth of Pennsylvania under the provisions of the Act of Assembly of the Commonwealth of Pennsylvania, approved May 14, 1874 (P. L. 166) and the Supplement thereto, approved May 4, 1889 (P. L. 80), except as herein otherwise provided.

3. The referee shall give the parties or their attorneys thirty days' previous notice of his intention to file his report on a day to be fixed by him.

4. The referee shall receive compensation in such amount as the parties shall agree on, or as the Court shall fix, without regard to the amount of

compensation fixed by the said Act of May 14, 1874.

December , 1927

THE UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION (FORMERLY UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION.)

By (Sgd) HENRY P. BROWN
(Sgd) JOSEPH J. BROWN,
Special Assistants to the Attorney General.
(Sgd) GEORGE W. COLES,
United States Attorney for the Eastern District of Pennsylvania.
(Sgd) CHAUNCEY G. PARKER,
General Counsel for United States Shipping Board Merchant Fleet Corporation.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

By (Sgd) RALPH B. EVANS.
Attorneys (Sgd) CHARLES SINKLER.

CRAVATH, HENDERSON & DE GERSDORFF,
Counsel.

(Seal)

REFEREE'S REPORT

(Filed July 24, 1930)

I, Owen J. Roberts, duly appointed Referee by decree dated April 30, 1928, and signed by Hon. J. Whitaker Thompson, report as follows:

After the order of reference was made herein I duly qualified as Referee and notified counsel of my readiness to hear the cause at their convenience. It was not convenient for counsel to present the matter to me as Referee until the early summer of the year 1929. Hearings were thereupon had by me, sitting from day to day, and adjourning only when counsel so requested. The hearings were completed on or about June 21, 1929.

Counsel then advised me that they desired to submit the matter to me upon briefs and requested time to prepare such briefs. The briefs were not filed with me within the time stipulated, but on the contrary the reply brief of the Government has not yet been submitted. It was about to be submitted when I was appointed an Associate Justice of the Supreme Court of the United States.

My said appointment makes it necessary for me to return to the Court for such action as to the Court may seem proper the record in the cause and the testimony taken before me as Referee, including stipulated matters of evidence and documentary evidence.

I accordingly transmit herewith to the Court the record papers delivered to me as Referee and the

transcript of testimony, including the documentary evidence taken before me as Referee.

My said appointment, in my judgment, disqualifies me to act further in the matter.

All of which is respectfully submitted.

(Signed) OWEN J. ROBERTS
Referee.

AGREEMENT APPOINTING SUBSTITUTED REFEREE

(Filed Mar. 23, 1931)

It is stipulated and agreed between counsel for the respective parties that William Clarke Mason, Esquire, be appointed Referee to succeed the Honorable Owen J. Roberts, with the same effect as if originally named in the Agreement of Reference heretofore filed in the above entitled cause, either party to have the right to require that all or any part of the testimony shall be taken de novo and to take additional testimony.

JOSEPH J. BROWN
Counsel for The United States Shipping Board Merchant Fleet Corporation (formerly United States Shipping Board Emergency Fleet Corporation).

RALPH B. EVANS.
Counsel for Bethlehem Shipbuilding Corporation, Ltd.

March 19, 1931

(Seal)

ACCEPTANCE AND OATH OF REFEREE

(Filed March 28, 1931)

I, Wm. Clarke Mason, the person selected as Referee in the above entitled cause, hereby file this my acceptance of the said Reference, and having been duly sworn according to law, and the required oath having been duly administered according to law, I do swear that I will faithfully and impartially perform my duties as Referee to the best of my ability and in accordance with the provisions of the statute and rules of this Court relating thereto.

(s) WM. CLARKE MASON

Sworn to and subscribed before me this 28th day of March A. D. 1931.

GEORGE BRODBECK
Clerk District Court United States Eastern District of Pennsylvania.

(Seal)

In The
DISTRICT COURT OF THE UNITED STATES
For the Eastern District of Pennsylvania

No. 3315 March Sessions, 1925

In Equity

The United States of America,
Complainant,
vs.
Bethlehem Steel Corporation; Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Steel Company; Fore River Shipbuilding Corporation; and Union Iron Works Company,
Defendants.

No. 11970 December Sessions, 1925

At Law

Bethlehem Shipbuilding Corporation, Ltd.,
vs.
The United States Shipping Board Emergency Fleet Corporation

REPORT OF SPECIAL MASTER AND REFEREE

(Filed Feb. 7, 1936)

HISTORY OF THE CASES.

The causes of action referred to the Master and Referee making this report (hereinafter called Mas-

ter) are at issue in the United States District Court for the Eastern District of Pennsylvania, and consist of a suit in equity:

The United States of America v. Bethlehem Steel Corporation, et al., March Sessions 1925, No. 3315, and four suits at law:

Bethlehem Shipbuilding Corporation, Ltd., v. The United States Shipping Board Emergency Fleet Corporation, December Sessions 1925, No. 11970;

Union Iron Works Company, for the use of Bethlehem Shipbuilding Corporation, Ltd., v. United States Shipping Board Emergency Fleet Corporation, December Sessions 1925, No. 11972;

Bethlehem Steel Company, for the use of Bethlehem Shipbuilding Corporation, Ltd., v. United States Shipping Board Emergency Fleet Corporation, December Sessions 1925, No. 11974; and

Fore River Shipbuilding Corporation, Bethlehem Shipbuilding Corporation, Ltd., v. United States Shipping Board Emergency Fleet Corporation, December Sessions 1925, No. 11976.

Trial by Jury in the cases at law was waived by written stipulation pursuant to the Federal Statutes.

There is filed of record a stipulation between the parties, appearing as Exhibit D, which disposes of

three of the suits at law: Union Iron Works Company for the use of Bethlehem Shipbuilding Corporation, Ltd., v. United States Shipping Board Emergency Fleet Corporation, No. 11972; Bethlehem Steel Company, for the use of Bethlehem Shipbuilding Corporation, Ltd., v. United States Shipping Board Emergency Fleet Corporation, No. 11974, and Fore River Shipbuilding Corporation, Bethlehem Shipbuilding Corporation, Ltd., v. United States Shipping Board Emergency Fleet Corporation, No. 11976, in which, pursuant to the agreement of the parties, judgments will be entered for the defendant as to the plaintiffs' claim and for the plaintiffs as to the defendant's counter-claim.

The issues to be disposed of are those in the suit at law of Bethlehem Shipbuilding Corporation, Ltd., v. United States Shipping Board Emergency Fleet Corporation, No. 11970, and the proceedings in equity in The United States of America v. Bethlehem Steel Corporation, et al., No. 3315, to the extent that these issues have not been settled by the several stipulations heretofore filed as a part of the record in each case.

These cases were previously referred to Owen J. Roberts, Esq., with consent of the parties, by order duly entered April 30, 1928. Hearings were had before the said Master and Referee, but before the causes could be argued by Counsel, and finally disposed of, Owen J. Roberts, Esq., was appointed a Justice of the Supreme Court of the United States. The report of Owen J. Roberts, Esq., was filed in the above entitled causes July 24, 1930, wherein he asserted his disqualification to act further in the matter by reason of his appointment as a Justice of the Supreme Court of the United States.

Pursuant to the agreement of the parties, the undersigned was appointed, March 23, 1931, substituted Special Master and Referee, in the above entitled causes, to succeed the Honorable Owen J. Roberts, with the same effect as if originally so named in the order of reference.

The Master proceeded to arrange for hearings, the parties having been given the right by the order of reference to have any or all of the testimony taken de novo.

At the hearings before the Master the testimony of certain witnesses called by the Government, and those called by Bethlehem Shipbuilding Corporation, Limited, hereinafter called "Bethlehem", was taken de novo.

The witnesses, Charles M. Schwab, and Charles Piez, who testified before the former Master, did not appear in person, but, in lieu of their testimony de novo, the testimony of these witnesses, previously taken, was introduced in evidence before the Master without objection, and appears as a part of the record before him, with the same force and effect as though these witnesses had been heard in person.

The Exhibits which have been made a part of this record were received without objection, and it was agreed by counsel for both parties that the testimony taken before the former Master, might be used by either party, to the extent desired, as a part of the record before this Master.

The hearings before the Master were followed by the filing of briefs and arguments of counsel upon the facts and the law, which counsel deemed relevant

to the issues, and thereafter the Master prepared, as of February 19, 1932, his Report upon these causes as Special Master and Referee, accompanied by his findings of fact and conclusions of law, in answer to the requests for the same by the Government and by Bethlehem and caused copies to be duly served upon the parties.

An informal discussion, with counsel for the Government and for Bethlehem concerning the conclusions of the Master produced the request from the Government that opportunity be afforded to clarify the Government's position upon the issues in these cases and to present certain modifications and additions to the Government's requests for findings of fact and conclusions of law, Bethlehem consenting, the Master announced his decision to withdraw his report as presented and to permit both parties to revise and amplify, if so advised, the requests for findings of fact and conclusions of law, and upon the filing of the same with the Master, accompanied by such additional briefs as counsel might desire to file, the Master would reconsider his decision and findings in the light of such new requests and arguments and file his Report thereon. This course was followed and, after a lapse of time, which has been a matter of regret and concern to the Master, the Master makes this report, and his findings of fact and conclusions of law based upon the revised requests for such findings and conclusions filed by the parties to these causes.

ISSUES

The many issues raised by the Government, upon the one side, and Bethlehem, upon the other, are set

forth in the pleadings both in the proceedings in equity and in the suit at law No. 11970. Stipulations by counsel have substantially limited the issues and thereby reduced the oral evidence taken at the hearings to slightly over one thousand pages.

When these cases were instituted in 1925 there was still uncertainty as to the relative responsibility of the United States of America and the Fleet Corporation for claims arising from war contracts entered into by the latter. It was not until the decision of the Supreme Court of the United States upon questions raised in such cases as United States v. McCarl, 275 U. S. 1, and Fleet Corporation v. Harwood, 281 U. S. 519, that these doubtful questions of law were disposed of, and the legal status of these parties to this litigation defined.

The claims and counter-claims presented in the two cases at issue between the parties, arise out of certain contracts entered into between the United States Shipping Board Emergency Fleet Corporation, and Bethlehem Shipbuilding Corporation, Limited, et al., for the construction of ships as a part of the program of the Fleet Corporation for immediate shipbuilding to meet the necessities of the Government in the World War. These contracts were placed for performance with the various shipbuilding yards of Bethlehem upon the east coast and the west coast and carried the following contract numbers: 177, 178, 179, 183, 184, 191, 196, 226, 230, 299, 300, 301 and 314. Of these contracts, Nos. 177, 178, 179, 183, 191 and 196 were dated December 31, 1917 and were executed February 1, 1918. Subsequently, and at different times, contracts Nos. 226, 230, 299, 300, 301 and 314 were entered into between the Fleet Corporation and Bethlehem.

The ships specified in the contracts under consideration were constructed and no questions now remain open concerning the performance of the contracts by Bethlehem. The stipulations of the parties filed in these cases eliminate any and all such questions.

The contracts in question were known as "Bonus for Savings Contracts", in that the contractor was to receive actual cost, including wage increases, plus a fixed fee, and to be paid, in addition to the fixed fee, one-half of any saving that might be made below an agreed-upon probable cost (base cost).

The position of the Government appears in paragraph Twenty-third of the Bill of Complaint in Equity, which reads as follows:

> "* * * The contracts hereinafter referred to were drawn in accordance with said proposal and the respective amounts stated therein as the estimated actual cost of construction, were represented by the Bethlehem Shipbuilding Corporation, Ltd., acting through its said representatives, as fair and reasonable estimates of said cost, based upon the wage scale then in effect and upon existing costs of material, and said corporation refused to undertake said construction if lesser sums were insisted upon by complainant.
>
> "Complainant avers that said representatives were knowingly false in that the Bethlehem Shipbuilding Corporation, Ltd., as hereinbefore set forth, was in a position to know what would be the approximate cost of constructing said vessels, and the said amounts stated in said

contracts were known by the said representatives of said corporation to be very greatly in excess of any costs which could reasonably be anticipated, based upon the wage scale then in effect and the existing costs of material. Complainant avers that said estimates and representations were made for the purpose of enabling the Bethlehem Shipbuilding Corporation, Ltd., to derive excessive, unreasonable and unconscionable profits from said contracts."

It is asserted in one of the briefs for the Government as follows:

"* * * it should be carefully noted that the Government's case does not depend upon proof that Bethlehem was in a position to determine the extent of the 'savings' which it might reasonably expect to effect. The important fact is that Bethlehem was in a position to determine the probable approximate cost of the respective tank and cargo ships in controversy upon the basis of the wage schedules referred to in the respective contracts, existing material prices, and existing efficiency, and that the base prices designated in the respective contracts were supposed to represent estimates of probable approximate cost determined upon that basis. Prices so determined afforded Bethlehem a reasonable opportunity to earn substantial 'savings' as a result of increased efficiency, and in the final analysis it is entirely immaterial to the Government's position whether or not Bethlehem was in a position to determine the approximate extent of the 'savings' which it might reasonably expect to effect by such means, or

whether it had reason to know only that such 'savings' would probably prove to be substantial, as against any given base price.

In an earlier brief the Government's position is somewhat differently stated:

"In connection with the question of reliance, while the propriety of the Government's position is not dependent upon the existence of any fiduciary relationship between it or the Fleet Corporation and Bethlehem, it should perhaps be pointed out that the relationship which actually existed was substantially equivalent to that existing between principal and agent, being described as follows in the publication issued by the Shipbuilding Labor Adjustment Board to shipbuilders under date of November 4, 1917 (Ex. G-98, Doc. Ev., p. 158):

" 'The owners of the shipyards are, during the duration of the war, merely the agents of the Government. Practically the whole shipbuilding industry of the country is being carried on for the benefit of the Government.'

"The practical situation was unaffected by the designation of Bethlehem as 'Contractor' instead of 'Agent', as in the substantially similar contracts made with other shipbuilders during September, 1917 (Exs. G-200, G-201, G-202). In both instances the contract provisions emphasized the complete control of construction vested in the Fleet Corporation which is summarized in both the 'Contractor' and 'Agent' contracts by the following provisions (See Article 24 of contracts in controversy, Article 27 of 'Agent' contracts, Exs. G-200, G-201, G-202):

> "'Control by Owner: The Contractor shall in the performance of its agreements hereunder comply with and be bound by all directions, instructions, and decisions of the Owner, or its authorized representatives, and compliance by the Contractor with any such directions, instructions, or decisions, shall be a justification and protection to the Contractor for any action so taken.'"

It is also contended by the Government that Charles M. Schwab (Chairman of the Board of Directors of Bethlehem Steel Corporation), while acting as Director General of the Fleet Corporation, caused another shipbuilder to modify existing contracts to reduce the profits to be realized from them to not more than 10% of actual cost, and that although he failed to cause similar limitations to be imposed upon Bethlehem, "as a matter of ordinary fairness and propriety" Bethlehem should be willing to accept for itself the same limitations upon profits which Schwab thought proper to impose upon the American Shipbuilding Company and should now relinquish all profits above such percentage.

In effect it is the position of the Government that because of the relations between Bethlehem and the Fleet Corporation as an agency of the Government, Bethlehem's course of conduct in negotiating and inducing the execution of the contracts in question without full disclosures of all facts known to Bethlehem in relation to the costs of the ships recently built by Bethlehem, and in failing to refund payments made thereunder, after the profits were ascertainable, sufficient to reduce Bethlehem's profits to not more than 10% of actual cost of the ships,

justifies the charges made by the Government in its Bill in Equity.

Bethlehem denies that there is any foundation in the facts showing the negotiations and the execution of the contracts in question, for a charge of fraud, and asserts that there were no such relations between Bethlehem and the Fleet Corporation at the time the contracts were negotiated or during their performance which should deny to Bethlehem the full enjoyment of all profits to which it became entitled by the contracts according to their terms. Bethlehem asserts that *in law* it is entitled to receive from the Fleet Corporation payment in full of the amounts due according to the terms of the contracts, and that there is no basis *in morals* why Bethlehem should surrender to the Government any part of these profits for which claim is made.

GENERAL FINDINGS AS TO THE CONTRACTS AND PROFITS

Bethlehem Shipbuilding Corporation, Ltd., hereafter referred to as "Bethlehem", represents a consolidation, effected at or about the time of its organization in October, 1917, of five shipbuilding companies which had theretofore been subsidiaries of the Bethlehem Steel Corporaton. Since the organization of Bethlehem, all of its stock has been owned by the Bethlehem Steel Corporation.

The names of Bethlehem's five subsidiary shipbuilding companies and the names and locations of their respective plants are as follows:

Name	*Plant*	*Location*
Union Iron Works Co.	Union	San Francisco, Calif.
Harlan & Hollingsworth Corp.	Harlan	Wilmington, Del.
Samuel L. Moore & Sons Corp.	Moore	Elizabethport, N. J.
Fore River Shipbuilding Co.	Fore River	Fore River, Quincy, Mass.
Penn-Mary Steel Co.	Sparrows Point	Sparrows Point, Md.

Each of the foregoing subsidiary companies at the time of said consolidation was an "old line" experienced shipbuilding company, employing a large, efficient and well equipped organization engaged in the business of building steel ships.

As a result of said consolidation, Bethlehem took over the operations of all five plants and became the largest shipbuilding concern in the world, both with respect to number of shipways and number of employees. During the summer of 1917, an extraordinary emergency of war existed and rendered it necessary for the United States to control the entire shipbuilding industry of the United States, and to requisition all ships suitable for war purposes then under construction at the various shipyards throughout the United States, and to enter into contracts with shipbuilders for the construction of as many additional vessels at it was possible for each

shipbuilder to construct, and to have the same constructed in the least possible period of time.

On August 3, 1917, the Fleet Corporation, acting upon behalf of the United States, requisitioned all merchant ships over 2,500 deadweight tons, then under construction in all shipyards throughout the United States, including those of the aforesaid five companies which were then subsidiaries of the Bethlehem Steel Corporation.

The Fleet Corporation and Bethlehem thereafter proceeded to negotiate the terms upon which Bethlehem would build ships.

The negotiations during late December, 1917, and early January, 1918 which resulted in the making of contracts Nos. 177, 178, 179, 183, 184, 191, 196, for the ships therein specified were, as the evidence appears to the Master, dealings at arm's length. Bethlehem was represented by two competent shipbuilders, Joseph W. Powell and Harry Brown. Fleet Corporation was represented by two equally competent shipbuilding experts, Admiral Bowles and G. S. Radford and they were advised by, and had full opportunity to advise with, Daniel H. Cox, a competent naval engineer and estimator, and Chester Cuthell, counsel for the Fleet Corporation. In addition to these representatives and officers, Fleet Corporation was protected by Charles Piez, Vice-President and General Manager who, while not a shipbuilder by experience, was a nationally known business executive of long experience.

At the time of the hearing before the Master, Admiral Bowles was dead and Cox and Cuthell were not called as witnesses. Charles Piez had testified

before the former Master and his testimony was presented to the Master from the previous record.

The testimony before the Master shows that extended conferences were had between the representatives of the Government and of Bethlehem in an effort to reach an agreement upon prices for the ships subsequently covered by the contracts dated December 31, 1917. The figures finally arrived at were the lowest Bethlehem would contract to take and were agreed to by Bowles and Radford as the best that could be obtained.

The Government seems to rest its strongest plea to support its charge of misrepresentations upon the averments and attempted proof that Harry Brown, as a basis for negotiations, created a cost chart solely from his imagination, which chart was untrue in its representations and was intended to deceive the representatives of the Fleet Corporation.

Brown, who was the Government's witness, testified to the contrary of the Government's charges. No other witness supported them. Bethlehem's witnesses denied them. They appear to persist only in the unsupported argument of Government's counsel. The chart did not purport to show facts. It purported to chart estimated costs dependent upon the uncertainties of the future. The chart was never used in any negotiations with the Fleet Corporation as an exhibit in itself or by reference to what it purported to establish. The Master finds that the chart was prepared by Harry Brown as an evidence of his best guess as to costs and without fraudulent intent.

There can be no doubt that the representatives of the Government were fully aware that Bethlehem hoped to make a substantial profit under the form of contract which was founded upon an agreed base price for the ships covered by such contract. Although agreed to, this base price was asserted by Bowles and Radford to be high. The extent of this profit was, of course, not then ascertainable. These contracts were, however, not signed until February 1, 1918 and it is fair to assume from the facts shown in the evidence that between December 12, 1917, when the negotiations began, until February 1, 1918, when the contracts were signed, Bowles and Radford, with or without the assistance of Cox and Cuthell, informed themselves sufficiently concerning the base price to be used in these contracts to enable them to reach a considered judgment as to whether, even though the contracts produced a substantial profit to Bethlehem from the "savings" realized under the terms of the contract, the net cost to the Government would be in excess of the going prices payable to other shipbuilders under then existing contracts on a lump sum or cost-plus basis.

As the Master views the evidence before him, the contracts resulted from negotiations in which both parties were represented by intelligent, well informed and experienced officers whose sole object was to make the best trade possible, under conditions which included the uncertainties of war time contingencies, the results from which were not and could not have been known at the time the contracts were made.

Radford, as a witness for the Government, and Powell, as a witness for Bethlehem, described the

situation in words which carry substantially the same thought. The statement by Powell that, at the time the contracts were negotiated, it was "impracticable to estimate within a reasonable percentage what would be the actual cost of construction" was conceded by Radford "to be a fair statement". Both witnesses testified that the prices which were agreed upon were the result of barter and trade. (Radford, R. pp. 994-995; 1000-1002, 1003, 1004-1005; Powell R. pp. 651-652; 702-704; 735, 736, 790.)

Radford testified fully before the Master in a manner which was convincing both as to his intelligence, his integrity and his sincerity. Little more is needed than a reading of the testimony of Radford, who is the Government's witness, to impel the conclusion that the charge of fraud made by the Government against Bethlehem is without foundation.

Following the conferences testified to by the several witnesses, Admiral F. T. Bowles and G. S. Radford signed a memorandum for Charles Piez, dated January 5, 1918, which expresses the conclusions reached by them, and appears in Documentary Evidence, p. 258, Exhibits B-28, G-117. This memorandum reads as follows:

> "We hand you herewith the Bethlehem Shipbuilding Corporation's proposal dated December 19, for additional construction at their various plants, amounting in all to 19 vessels, exclusive of tugs. It may be noted that, with the exception of three ships, the vessels in question are troop ships and tankers—ships of a type that only real shipbuilders can produce satisfactorily. As is well known, we have been having difficulty in placing such vessels.

"We wish to place on record the fact that the Bethlehem Shipbuilding Corporation's representatives have insisted on comparatively high prices for these vessels; that they have only with difficulty been persuaded to quote us on the types of ships referred to; and, that their attitude has been characterized by an arbitrary refusal to guarantee or stand behind delivery dates. In other words, it was difficult to persuade them to quote even a tentative delivery date, and they refused positively to accede to a bonus and penalty clause for delivery.

"The letter herewith, addressed to the Bethlehem Shipbuilding Corporation, in reply to their proposal, has been prepared for your signature and is now presented with the recommendation that it be signed. While the prices we have agreed to, with representatives of the Bethlehem Shipbuilding Corporation, are not satisfactory to us, nevertheless, they represent a material reduction from the prices quoted by that corporation. Realizing that the Nation will need these vessels, we have been actuated by the belief that further delay in placing the contracts should be eliminated and we believe that we have made the best compromise possible under very difficult conditions."

Prior to the receipt of this memorandum from Admiral Bowles and Radford, Charles Piez, as vice president and general manager, had received a letter from Powell in anticipation of the final conference with Admiral Bowles. In this letter (Documentary Evidence, p. 256, Exhibit G-116) Powell agreed on behalf of Bethlehem "to accept the order to con-

struct these vessels on such terms as may be personally determined by Mr. Charles Piez, the vice president and general manager".

Charles Piez (pp. 877-880) testified in relation to the Memorandum and Powell's letter.

Q. Do you know of your own knowledge what Admiral Bowles did in the way of checking up the proposals submitted by the Bethlehem Company?

A. Bowles reported several times to me while negotiations were going on.

Q. He reported that Bethlehem were reluctant to build tank ships and were only persuaded with the greatest difficulty to build such ships?

A. Yes.

Q. He also reported, did he not, that the prices submitted by Bethlehem, and as finally reduced after a process which has been described by counsel for Bethlehem as a jewing down process, were still too high and unsatisfactory to Messrs. Bowles and Radford?

A. Yes.

Q. And at the time they made that report to you, you had in your possession, had you not, a letter from Mr. Powell in which he states—I am referring to page 257 of the Concession of Documentary Evidence, Exhibit G-116—"We further refer to my conference with the vice-president and general manager of the Emergency Fleet Corporation on Friday the 21st ultimo. This will confirm the statement then made that while this company cannot undertake any capital expenditures at its expense, if the

terms in our proposal do not otherwise meet the Emergency Fleet Corporation's approval, we are prepared to accept the order to construct these vessels on such terms as may be personally determined by Mr. Charles Piez, the vice-president and general manager, and strongly urge there be no delay in placing this order, as we are making this offer because of our knowledge of the vital emergency now confronting this nation in connection with the requirements for additional merchant vessels." You had that letter in your possession, did you not?

A. Yes, sir.

Q. What did you do with that letter in your possession with respect to the report of Messrs. Bowles and Radford that the prices which Bethlehem insisted on, even as reduced, were still too high?

A. Probably endeavored to get another reduction.

Q. You probably endeavored to get another reduction?

A. That would be the natural thing to do.

Q. Did you do that yourself?

A. I don't recall.

(pp. 864-865):

Q. Subsequently you signed the letters which have been offered in evidence respectively as G-118, G-119, and G-120, and which in the printed documents immediately follow the memorandum of January 5th, awarding these contracts to Bethlehem at the prices named?

A. Yes, sir.

Q. In point of fact, those letters were pre-

pared by Bowles and Radford and submitted to you with their memorandum of January 5th?

A. Yes.

Q. Do you recall whether after the receipt of that memorandum and before releasing the letters which accompanied it, you yourself made a check of any of the base prices that were specified in those letters with the prices at which contracts for the construction of other ships were being let?

A. I did.

Q. How did you make that comparison?

A. I compared the cost of two ships included in this order from the Union Plant with the prices on ships that we bought at the same time from the Moore Ship Building at Alameda. Both were under the same wage scale, as I recall it. The cost of the Moore ships ran about $245 per deadweight ton. The cost of the Bethlehem ships, including the base price plus the fee, plus the participation in savings—the base price plus the fee, which was the maximum cost of these vessels represented to the Government, and found that the price quoted by Bethlehem was about $230 per dead-weight ton against $245. I think there were several other comparisons made.

George S. Radford (pp. 1010-1012):

Q. One other question and that is whether or not you knew at the time of the agreement reached on January 3rd of a letter of that date which Mr. Powell had delivered to Mr. Charles Piez whereby he indicated his willingness to leave the matter of price in the contract to Mr. Piez

in the event that Admiral Bowles and he were unable to reach an agreement?

A. I remember the letter because I was shown the original two or three years ago. I remember it quite clearly. I am very certain that I had not seen that letter until the date which I initialed on the bottom of it, and I am sorry that I don't recall that date, but I would not have written the memorandum which you referred to a short time ago if I had known of the existence of that letter. That is quite unreasonable to think that that would have happened and that probably clears the point for you. Now when I saw the original letter, of course it was one of dozens of letters on the different work at the time, and all I did was that I was quite careful to initial and put the date on any important paper that came before me, and when the original was handed to me two or three years ago I looked for that and found the date was some days afterwards and I think it was about the 11th.

Q. That was about how long after January 5, 1918, that you saw that letter, do you suppose?

A. I think the date I saw it was about the 11th. The original ought to be around here somewhere and you will find on it the stamp and the initials.

Q. Your best recollection, as I understand it, is that that letter came through to you in the ordinary course of routine business?

A. Considerably later.

Q. And probably about January 11, 1918, is your recollection?

A. Yes, sir.

Q. After you did see that letter did you take up with Admiral Bowles or with Mr. Charles Piez a suggestion that the price had been fixed at the base price for these contracts be revised before any start of the work was undertaken?

A. No, sir. I can answer that question in the negative for the reason that it would have been contrary to my own feeling what was a proper policy for the Fleet Corporation. The object of the Fleet Corporation was not to put the Government into shipbuilding as a big shipbuilder but it was to spread out the job and decentralize it as much as possible, and I would have personally objected on the theory of the thing to anything that would say, "Now you go do this way we say you are to do it."

Q. You would have preferred to have taken the chance on recommending something more than might be regarded as giving a reasonable profit in order to get the work going on a large scale by Bethlehem?

A. Well, and to leave us out of the picture as having ordered them how they were to do a thing and under what conditions. We wanted to give them the job of producing certain ships, and the only influence that letter would have had on me would be to cut out the word "arbitrary" in that memorandum. That is one of the things that you dictate in the busy day and it comes back to bite you ten years afterwards.

The form adopted for these contracts was before the Circuit Court of Appeals for the Sixth Circuit in Dayton Airplane Co. v. United States, 21 Fed. (2d) 673, and that Court, in an opinion by Judge

Dennison, not only approved the form of contract as lawful for the Government to enter into, but as desirable because its provisions seemed advantageous to both parties. The opinion contains the following:

> * * * As to the third, the bonus for savings, the complaint is that, although the contract expressly provides therefor, it is to that extent void because against public policy, and that this position is emphasized in the present case by the unconscionable amount of profits resulting to defendant. This provision was common in governmental contracts during the war. Although it is said to have been new in governmental contracts at that time, it had long been common in private building contracts; indeed, it was almost a necessary corollary or incident of a cost-plus contract. Much is to be said both for and against the economic good policy of 'cost-plus' contracts for governmental work; but it is well known that, during the war emergency, they seemed to be necessary, and that they were authorized and employed to a very great extent. To preserve the motive of self-interest on the part of the contractor and yet to neutralize any tendency on his part to increase his percentage by increasing cost, the theory was adopted that the parties should agree upon an estimated price, which would be the probable cost as near as they could foresee, and that then the contractor should be allowed, in addition to his flat percentage, a portion of any savings which he was able to make below the estimated or 'bogey' price. In this case that

bonus was 25 per cent., and, as computed, it amounted to the sum named."

"With regard to plaintiff's claim that this provision was against public policy, it is enough to say that no authorities are cited to that effect, and that, for the courts to undertake, years afterwards, to set aside a wartime contract of the government because against public policy should be and is, in our judgment, quite impossible. Even if the subject were otherwise open, it would be difficult to set aside only one contract provision which formed a part of the consideration for the counter promises."

At the time these contracts were entered into, insofar as the evidence before the Master shows, Piez, Admiral Bowles, Radford and Cox had knowledge, or information available, from which knowledge could have been obtained, whereby to judge of the reasonableness, under all of the circumstances, of the estimated base price for the contract ships.

The Government has not produced a word of testimony to prove that, had the Government representatives known exactly what the profit to Bethlehem under the contracts dated December 31, 1917 eventually would be, the contracts in question would not have been made because they could produce such profit. The Master must assume that, as the burden was upon the Government to prove this to be the fact in its attack upon the profits from the contracts, the failure of the Government to develop such evidence from Piez, Radford, Cox or Cuthell justifies the inference that had the effort been made the testimony would have proved the contrary, and that the Government's witnesses, if asked, would have testi-

fied that regardless of the profit, as the contracts represented the best price obtainable from Bethlehem for the building of the ships, the contracts would have been entered into.

The Government aimed to win the War. Bethlehem was deemed essential to doing so. A failure to induce Bethlehem to undertake the shipbuilding program covered by these contracts, followed by the taking possession by the Fleet Corporation of the Bethlehem plants, could not have accomplished the desired result. It was Bethlehem's organization that was necessary to insure success to the shipbuilding program of the Fleet Corporation and, as the Government did not have power to compel performance by an unwilling organization, if Bethlehem demanded its price on the basis of substantial commercial profits rather than contribute such services on a patriotic basis, the Government was obliged to take the contracts on such basis or not at all.

The evidence shows, and the Master finds, that the Fleet Corporation made the contracts with open eyes, although resenting the commercial attitude of Bethlehem and condemning Bethlehem for demanding its "pound of flesh", and did so because of a realization of the necessity of attaining an objective with the shipbuilding program which, without Bethlehem, might not be possible.

The controversy over the percentage of profits to be derived by Bethlehem for the performance of the contracts under consideration during the wartime period, leading to the charge that such profits were inordinate, unconscionable and therefore unlawful, regards the profits only in relation to the actual cost of the ships. It is to be remembered, however,

that Bethlehem was an old line shipbuilding company, carrying the burdens of idle invested capital over long-time periods, the maintenance of an experienced and expensive organization, which, during periods of inactivity in the shipbuilding industry, probably was not productive of overhead, such as maintenance, taxes and other carrying charges. All of these, however, were charges incident to the stand-by service rendered by Bethlehem, to enable it to perform active service when the needs of the Government might require it. It may well be, as Bethlehem contends, that these factors must have been taken into consideration by the representatives of the Fleet Corporation in their determination that, regardless of the opportunity which the contracts would afford to Bethlehem for substantial profits, it was worth the extra cost, if any, to the Government to place the contracts with an old line company and to insure the continuous service of Bethlehem so long as the war needs might call for it.

The profits afforded to Bethlehem from these shipbuilding contracts are in large measure to be paid, of course, by Bethlehem's fellow taxpayers who supply the funds, Bethlehem contributing, no doubt, most of its "bonus for savings" as originally anticipated by Powell (pp. 779-784). But, after all, without Bethlehem the World War might have lasted many months longer and the burdens upon these same taxpayers might thereby have been enormously increased.

It is a matter of conscience how much one takes from those needing service in necessity. It is a matter of honor to pay for such service at the contract price, even though, when the necessity be over, the

obligor may regard the weight of his debt unduly burdensome.

POWER OF THE GOVERNMENT TO CANCEL CONTRACTS

It is fair to assume, even without reference to Exhibit B-6, that prior to the Armistice information had been acquired by the Fleet Corporation concerning actual cost of the construction work on the contract ships by reason of the current audits for the Fleet Corporation of the Bethlehem contract work, from which a comparison with the estimated base cost could readily have been made. It was within the power of the Government under the Federal statutes, to cancel the contracts with Bethlehem and thereby deprive Bethlehem of its estimated profit.

See Russell Motor Car Co. v. United States, 261 U. S. 514.

Also De Laval Steam Turbine Co. v. United States, 284 U. S. 61. Mr. Justice Sutherland:

> "Whether the contract taken or cancelled is one with the government or is a private contract, the result of the two cases is that just compensation means the same—'the value of the contract at the time of its cancellation, not what it would have produced by way of profits . . . if it had been fully performed'. Russell Co. v. United States, supra."

This power of cancellation was one of the reasons which induced Radford to accept the estimates in spite of his belief that the speculative chances for profit under the war conditions were more favor-

able to Bethlehem than against it. (Radford, R. 1002.)

The fact that the Government failed to exercise the power of cancellation preserved to Bethlehem its contract rights, and the benefits from the fulfillment of these contracts are what Bethlehem claims.

Is the dual position which Charles M. Schwab held a reason in good morals why Bethlehem should waive part of the claimed profits?

It is asserted by the Fleet Corporation that in good morals Bethlehem should not enjoy the full amount of the profits to be realized from these contracts, because Charles M. Schwab deprived the American Shipbuilding Corporation of somewhat similar profits, reducing them, by the exercise of his power as General Manager of the Fleet Corporation, to a profit of only ten per cent. of actual cost, and that Bethlehem should have been dealt with likewise.

The evidence, which is uncontradicted, shows that Mr. Schwab accepted the position of Director General of the Fleet Corporation at the request of the President of the United States on the condition that he would undertake it only if regulations and stipulations were made, as he stated, "to relieve me of any possibility of doing business with my own concern". This condition was agreed to by the Fleet Corporation, and all dealings which the Fleet Corporation had with Bethlehem were through representatives other than Mr. Schwab. (Documentary evidence, pp. 579-580.)

There is no evidence that the agreement made at the time Mr. Schwab assumed the office of Director General was changed or any responsibility whatever imposed upon him concerning the relations between the Fleet Corporation and Bethlehem.

In addition to the fact that Schwab had no responsibility for Bethlehem's contracts, and that the profits from them were not ascertainable before Schwab severed his relations with the Fleet Corporation, there are facts to show that the position of Bethlehem and the American Shipbuilding Corporation, in so far as the status of their respective contracts, is concerned, was not the same.

The evidence shows that the adjustment arrived at between Schwab and Farr, president of the American Shipbuilding Corporation, was made possible because the limit of a ten per cent. profit was what Farr had agreed to at the time the first contracts were negotiated with Admiral Capps, and that, with this understanding, contracts were executed with the American Shipbuilding Corporation on a lump sum basis rather than cost plus ten per cent., because Farr did not want to subject his company to the audit processes of the Fleet Corporation.

The Master finds as a fact that Charles M. Schwab had no responsibility as a representative of the Fleet Corporation or of the United States of America in relation to the contracts between Bethlehem and the Fleet Corporation, and that there is no evidence to support the charge that the dual relationship of Charles M. Schwab imposes upon Bethlehem, in good morals, the duty to relinquish all profits from these contracts above 10% of the actual cost of the ships.

COMPARISON OF BETHLEHEM'S WAR PROFITS WITH OTHER PROFITS

The major brief for the Government contains the following language (pp. 321-322):

> "It is the position of the Government that Bethlehem is not entitled to retain any sums paid to it on account of 'fixed profits' or 'half-savings', or to receive any further payments on that account in connection with the contracts in controversy.
>
> "Having perpetrated a gross fraud upon the Government in connection with such contracts, it would be unreasonable to hold that notwithstanding such fraud, Bethlehem should receive as compensation the same amount which would afford just compensation to an honest shipbuilder for doing the same work done by it. Any such decision would mean that Bethlehem had everything to gain and nothing to lose, financially, in attempting to defraud the Government and would encourage dishonest contractors to take advantage of the Government under like circumstances.
>
> "No one can say that this country is done with war or how soon a national emergency will again exist calling for the maximum production of every shipyard throughout the United States. At such a time plant requisition will again prove impracticable, there will again be no time for haggling, and the Government will again be obliged to depend upon the integrity and patriotism of the manufacturers with whom it is forced to deal. At such a time there will undoubtedly again be those who will

look upon the national emergency as an opportunity to make enormous profits for their respective companies and themselves at the expense of the Government, and whose patriotism and sense of propriety will not, in themselves, be sufficient to restrain them from taking full advantage of such opportunity.

"What is needed is, in the words of Schwab, an object lesson which will serve to check the cupidity of those who may hereafter have occasion to deal with the Government under conditions similar to those existing at the time of Bethlehem's negotiations with the Fleet Corporation (Ex. G-160, Doc. Ev., p. 493). In its influence upon such dealings, and as a beacon by which such persons may determine the duty of fair dealing owed by them to the Government and be warned of the dangers involved in the violation of such duty, the decision in these proceedings will be of far more importance than the millions now involved."

The Master, as of course, has given due consideration to so serious a charge, and no small part of the time which has elapsed since the second argument before the Master, in which the charge was seriously repeated, has been consumed while the Master has endeavored to ascertain from available sources, whether, if the charge were found to be justified, the remedy proposed by the Government of penalizing Bethlehem to the extent of its contract profits would aid in the elimination of such war profits in the event of future wars.

The Master has examined the records of certain of the Congressional Investigations with judicial

curiosity, in the hope that the reports of one or more of these Congressional Committees might supply for *judicial notice* some of the facts relating to the wartime problems of the Government and the shipbuilders which the parties before the Master failed to produce.

Judicial notice produces information which frequently is helpful and sometimes essential.

> Werk vs. Parker, 231 F. R. 121, 249 U. S. 130;
> Duplex Company vs. Deering, 254 U. S. 443;
> (see pages 474-477);
> Arizona vs. California, 283 U. S. 423.
> (see pages 453-458).

The Master includes herein some of the findings of the Senate Committee on Investigation of Munitions Industry, for such *judicial notice* as the reviewing Courts may care to take of them.

The Master refers to the following:

Special Committee on Investigation of the Munitions Industry Senate Resolution 206 (73d Congress) Report No. 944, Part 2.

> "The apparent alternative of commandeering industry is in fact not an available alternative. If the owners of industry are compensated to their own satisfaction and surrender their enterprises and the benefits of their operating experience to the Government, as in the case of the railroads during the World War, the cost is as great as the cost of meeting industry's demands for its services. On the other hand, if any significant part of industry were to be arbitrarily confiscated against the wishes of the majority of the business community, the

chaotic condition resulting from the great social and political animosity which would be aroused thereby would definitely retard the production which is of paramount necessity for the prosecution of a modern war." (p. 4).

"2. While this incapacity of the Government to take over or to dispense with the function of any industry is the main reason for the expectation that even complete theoretical authority and power will never be invoked, there is another subsidiary reason. The administration of prices and procurement is inevitably put into the hands of people who have been industrially trained and who are sympathetic to private industry's demands." (p. 5)

(Alternative to Suggested Constitutional Amendments.)

"2. The necessity that the governmental price-control agencies must largely rely upon industry for their information as to costs, capacity, production needs, and other fundamental information, and the fact that the personnel of these agencies must be largely made up of men who have been industrially trained and who are sympathetic to private industry's contentions, when added to the critical importance of increasing industrial output in war time, prevent the fixing of prices below such a level of profitability as the bulk of the producers in any industry agree is fair. (See pp. 73 to 83 and pp. 55; and 62-63.)

3. The fact that costs are in the last analysis matters of opinion and are not susceptible

of scientific determination and the gigantic nature of the administrative task involved in enforcing any price provisions opposed by a substantial portion of industry make it impossible to eliminate war profits by price control except to the extent that industry agrees to accept a limitation of its profit-making potentialities. (See pp. 84 to 91 and pp. 92 to 94.)

4. There are large profits and there is inequality in peace time. The strain and stress of war is not conducive to the adoption of fundamental reforms which cannot secure acceptance even in time of peace. We must guard against a blind belief that all profiteering can be ended by proposals for war-time taxes and industrial control.

5. Severe war-time taxation ensures the subjecting of the administrative officials responsible for its operation to heavy direct and indirect pressure for the alleviation of tax burdens, it increases resistance to tax collection, and if it reaches a level which the majority of business men feel is confiscatory, will discourage or prevent the volume of production so essential to the successful prosecution of a major war and thus defeat its own ends. (See pp. 37 to 43 and pp. 10 to 12.)

"(3). Severity of Taxation During World War. Patriotism in the last war was tested in a situation where the highest excess-profits tax rate continued in existence for only 1 year, was 80 percent of profits over and above an exemption of at least 10 percent of investment, which as pointed out above, at page 8, is not a check

on the absolute amount of profits. Mr. Haig, in speaking of the British experience on the subject, indicated that abuses would develop even with a rate far below 80 percent.

Best informed British opinion places the maximum share which can be safely taken by the Government at about 50 percent. If the Government takes more than the half of the pound of profit, abuses, it is believed, are certain to develop." (p. 12)

"VII. Attempts to Limit Profits. The committee finds, under the head of Attempts to Limit Profits, that the failure of the Navy Department to turn the navy yards into effective yardsticks by which the charges of private shipyards could be measured and kept down has resulted in leaving the profits of the shipbuilders practically uncontrolled." (p. 7)

The committee finds that the Vinson-Trammell bill of 1934 limiting profits to 11.1 percent of cost cannot be enforced without a huge police force of accountants and that disputes concerning its interpretation, similar to those which delayed the payment of war-time taxes by the companies for 12 years may confidently be expected. (p. 7)

"Cruiser Awards. (a) Some evidence of the fairness of the prices bid for these cruisers is given by the profits made by the companies on them. Newport News made $5,601,851 or 35 per cent profit over cost on U. S. S. Augusta and U. S. S. Houston (Feb. 14, galley 91 ZO); Bethlehem Ship made $2,200,000 or 25.4 per-

cent profit over cost on U. S. S. Northampton (Feb. 27, galley 26 QD). New York Ship made $2,946,706 or 36.7 percent profit over cost on U. S. S. Chester (Exhibit No. 1540, p.).

Due to changes made by the Navy after the awards were granted, both the cost of the cruisers in the private yards and in the navy yards ran over the original figures, including the changes.

The navy yards completed the ships for less than their estimates excepting for those changes. The Puget Sound Yard was $1,084,267 under its estimate on U. S. S. Louisville. The Mare Island Yard was $182,389 under its estimate on U. S. S. Chicago.

Mr. Homer S. Ferguson, president of Newport News, said:

I was perfectly amazed that we made so much, referring to the cruisers Houston and Augusta (Feb. 14, galley 92 ZO).

Nobody on this committee is more surprised than I am on the profit we made on those ships. I would not believe it because we had not done that before * * *. I think it is rotten business in addition to not being right, so that the amount of profit was a surprise to me for fair.

Mr. S. Wiley Wakeman, manager of Bethlehem Shipbuilding, said:

We figured our profit would be $938,000. It actually turned out to be $2,200,000 (galley 26 QD). We estimated we would make a profit of 10.2 percent and we actually made a profit of

25.4 percent—which surprised us very much, because we expected we were going to be stuck on weight. (Feb. 27, galley 27 QD.)" (p. 20)

Special Committee on Investigation of the Munitions Industry Senate Resolution 206 (73d Congress) Preliminary Report.

"III. Prices Increased with Big Navy—The Committee finds, under the head Prices Increased with Big Navy, that the need of the Navy for many ships in 1933 was the main cause for the increase in prices charged by the private shipbuilders, and that they frankly admitted this, and that the Navy recognized the fact.

Q. They (the shipbuilders) were frank enough to say they were putting up prices because of the great amount of work at the time?

A. (Admiral Robinson). There is no question about that." (p. 4)

The foregoing is interesting in that it shows that, in peace times, the Government contracts produced a greater profit to the shipbuilders than the war time contracts of Bethlehem here complained of. It also shows variations between estimates of ship costs and actual costs similar to those testified to by the witnesses as frequent in the industry. (Pp. 668-669.)

The Contracts were entered into upon a "base cost" intended by Fleet Corporation to produce substantial profits to Bethlehem.

The Master is impressed by the facts shown in Exhibit (B-6). This letter was written by Charles

Piez as Vice-President and General Manager of the Fleet Corporation to the Board of Trustees of the Shipping Board, under date of October 9, 1918, and while it relates to the contracts Nos. 340 and 465 for the building of troopships and these contracts are not involved in the cases before the Master, the letter clearly demonstrates that the representatives of the Fleet Corporation, through means available to them, had, in the Spring of 1918, arrived at a method of fixing the base cost acceptable to the Fleet Corporation. In this letter Piez states the following:

> "In fixing these estimated basis costs, care must be exercised that they be not placed at too low a figure, for if they are, the probabilities are that the contractor will lose interest in keeping the cost down as soon as it finds that the ship will cost more than the estimated basis cost.
>
> "We discussed this matter with the Board at the time the commitments were made last Spring, and showed how we intended to fix the basis cost. At the suggestion of the Board, our method of fixing the basis cost was not kept on the record, the Board fearing that such a record might be an embarrassing precedent."

It is inconceivable, with such information available during the period either prior to or immediately subsequent to February 1, 1918, that if Admiral Bowles and G. S. Radford, or Charles Piez, thought that the base price fixed in the contracts with Bethlehem bearing date of December 31, 1917 and executed February 1, 1918, would result in excessive cost to the Fleet Corporation, when compared

with costs of other shipbuilders, that such contracts would not have been modified or cancelled.

Bethlehem gave fair warning to the Government of its expectation and hope of profits from savings to pay its war taxes.

The letter from Bethlehem to the Fleet Corporation of December 13, 1917, contains the following (Documentary Evidence, p. 202):

> "Because of the unprecedented conditions surrounding the Labor and Material market, it is impracticable to estimate within a reasonable percentage what will be the actual cost of construction, and it is therefore impossible to submit fixed prices for any of these vessels, except upon a basis so far above estimated cost that any figure acceptable to this Company would not be acceptable to the Emergency Fleet Corporation. It is proposed, however, that they be constructed on the basis of actual cost plus a fee, with an agreed upon probable cost, this Company to be paid in addition to the fee one-half of any saving that may be made below this cost figure, and with the further provision that the estimated cost figure will be increased due to any increase in rates of wages that may be approved by the Emergency Fleet Corporation. The definition of cost and the general terms of the contract so far as applicable, to be the same as those for the eighty-five destroyers, contracts for which were signed on December 6, 1917, by the Navy Department and this Company. *The basis of fees and estimated cost to be such as to offer a reasonable probability of a net earning after paying all War and Excess*

Profits taxes as today existing, of Ten Percent (10%) of the present estimated cost of construction."

The Fleet Corporation was then put on notice by Bethlehem of the profit which was hoped for, and the evidence produced by the Government before the Master fails to show to what extent, if any, the hoped for profit may be exceeded.

The average profit to Bethlehem upon these contracts upon the basis of the maximum profits realizable by Bethlehem, appears to be 22.245% of actual cost. It is interesting and helpful to the determination of this issue to find that the average profit upon the same basis from contracts entered into as of later dates (Nos. 226, 230, 299, 300, 301 and 314), appears to be 24.171%.

The evidence shows, and the Master finds, that as to the later contracts the representatives of the Fleet Corporation had opportunity, which they took advantage of, to determine whether the "base cost" of Bethlehem would produce a higher net cost to the Government than those contracts of other shipbuilders, and that as a result of deliberate judgment they fixed the "base cost" of all of these contracts at what was believed to be as fair and reasonable as could be estimated under all of the existing circumstances (see G. 134, Doc. 391). The evidence also disclosed that the "educated guess" of Powell and Brown as to the "base cost" for the contracts of December 31, 1917, produced a still less cost to the Government of ships built under these contracts than under the lump sum or cost plus contracts with other shipbuilders.

Bethlehem has been charged with evading the inquiries of the Government during the early years of this controversy concerning its profits and it is urged that this lack of frankness is evidence of knowledge that these profits were unlawfully procured.

Mr. Justice Holmes said in Bullen vs. State of Wisconsin, 240 U. S. 625 (1916), pages 630-631:

> "* * * We do not speak of evasions, because, when the law draws a line, a case is on one side of it or the other, and if on the safe side is none the worse legally that a party has availed himself to the full of what the law permits. When an act is condemned as an evasion what is meant is that it is on the wrong side of the line indicated by the policy if not by the mere letter of the law."

The Master finds no reason to doubt that the rule to be applied in these cases is that stated by Mr. Justice Butler, in Reading Steel Casting Co. vs. United States, 268 U. S. 186, where, in determining the rights of the parties to a Government contract, he said (p. 188):

> "The contract is to be construed and the rights of the parties are to be determined by the application of the same principles as if the contract were between individuals. Smoot's Case, 15 Wall, 36, 47; Manufacturing Co. v. United States, 17 Wall. 592, 595; United States v. Smith, 94 U. S. 214, 217."

The Government relies upon the case of Burke & James, Inc., v. United States, 63 Court of Claims Reports 36, as authority for its request that the

Master shall find that the contract is unenforceable because it may produce for Bethlehem an unconscionable and grossly excessive profit. The Master has examined the Burke & James case, and is of opinion that the facts upon which the decision of that case was based are so different from the facts appearing in the record before the Master that the rule applied by the Court of Claims is not applicable here.

The rule which has protected the Government so frequently in the enforcement of contracts, favorable to it, is available as a protection against an attempt of the Fleet Corporation, as an agency of the Government, to avoid the consequences of a lawful undertaking:

> Carnegie Steel Co. v. United States, 240 U. S. 156, 164. "The court cannot make a different contract from that which the parties made for themselves."
>
> United States v. Bethlehem Steel Co., 205 U. S. 105, 119. "The question always is, what did the parties intend by the language used? When such intention is ascertained it is ordinarily the duty of the court to carry it out."

The Master, for the reasons stated, finds that the charge against Bethlehem of fraud in the making of the contracts under consideration is without foundation upon this record, and that these contracts are valid, enforceable obligations, according to their terms, against the Fleet Corporation.

DISCUSSION AND CONCLUSIONS UPON THE WAGE SCHEDULES

The amount of the judgment, to which Bethlehem is entitled, is dependent upon the interpretation to be given to the so-called Wage Schedule in the several contracts.

The controversy between the parties to this litigation over the applicable base wage schedule to be applied in ascertaining the estimated base cost for the contract ships arises out of the language used in Article XIX of the several contracts.

The West Coast contracts provided (Article XIX) that "actual cost . . . based upon an estimated actual cost to the contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board and in force on January 3, 1918, at said shipyard."

The East Coast Contracts read "actual cost . . . based upon an estimated actual cost to the contractor at the wage schedule as adopted by the Federal Adjustment Wage Board and in force on January 3, 1918, at the Navy Yard of the United States at (Boston, Brooklyn, Norfolk, or Philadelphia, as the case may be).

The Stipulation of Facts (pp. 4-9, inc.) sets forth the several contentions of the parties in relation to the effect of increased wages upon the estimated base cost of the ships.

The Master has considered the questions in the light of the contentions of the several parties, based upon evidence as to which there is no dispute, and has reached the following conclusions:

As to the West Coast Contracts:

The wage schedule which was adopted by the Federal Adjustment Wage Board and in force in the West Coast shipyards on November 24, 1917, was increased by a war service payment of ten per cent. effective on and after December 15, 1917, in accordance with the terms of the Order of the Wage Adjustment Board of December 8, 1917.

The Documentary Evidence (p. 196, Exhibit B-15, and p. 198, Exhibit B-16) shows that Bethlehem made the said war service bonus effective in its Union shipyard on the West Coast on and after December 15, 1917. It follows, therefore, in the opinion of the Master, that the wage schedule applicable to the West Coast Contracts, as the schedule in effect January 3, 1918, included the ten per cent. war service bonus theretofore made effective in the West Coast Yards.

The Master is of opinion that the applicable wage schedule did not include the straight ten per cent. increase which was to become effective February 1, 1918, in accordance with the order of the Board of December 8, 1917, because not only was this increase not in effect in the West Coast shipyard on January 3, 1918, but there was no order of the Wage Board prior to that date making it unconditionally effective at any time. The order with reference to this increase provided (Documentary Evidence p. 195) "that nothing in this memorandum shall prevent a rehearing of this matter by the Wage Adjustment Board." As to the West Coast Contracts the contention of Bethlehem, in the Stipulation of Facts (p. 7), set forth as Contention C, is the contention approved by the Master and will be made the

basis for the computation of the amount to be awarded to Bethlehem.

As to the East Coast Contracts:

The Government has asserted that because the Federal Adjustment Wage Board had no jurisdiction over Navy Yard rates there was no wage schedule upon which to base the estimate of cost of ships under the East Coast Contracts.

There were, however, wage schedules in effect in the Navy Yards throughout the country, varying with the location of the yard, which had been adopted by the Navy Yard District Wage Boards and, according to the conceded facts, in November and December 1917, the Fleet Corporation authorized Bethlehem to put into effect at each of its four East Coast shipyards on ships under construction for the Fleet Corporation the rates then prevailing at the respective Navy Yards nearest to such shipyard, and on January 3, 1918, Bethlehem actually had, insofar as was practicable, put into effect in each of its East Coast shipyards such rates.

As of January 3, 1918, there were no outstanding orders of the Shipbuilding Labor Adjustment Board or of any other Board having power to fix rates for the Navy Yards which increased Navy Yard rates over and above those actually in effect prior to January 3, 1918. Thereafter, and on various dates, to wit., February 14, 1918, March 1, 1918, April 6, 1918, and October 24, 1918, the Shipbuilding Labor Adjustment Board made awards increasing the rates of wages payable to labor engaged in ship construction in one or more of the East Coast yards of Bethlehem.

The master is of opinion that none of the increases in the rates of wages authorized by orders issued after January 3, 1918, are to be made a part of the wage schedules which go to form the estimated base cost of the ships covered by the East Coast Contracts.

The Master finds, therefore, that the schedule of wages referred to in Article XIX, of each of the so-called East Coast Contracts is the schedule of wages in force on January 3, 1918, at the Navy Yard therein specified, and that Contention D (Stipulation of Facts, p. 8) will control in determining the computation of the amount to be awarded to Bethlehem.

Recommendations.

The Master and Referee recommends that the causes be disposed of as follows:

A. Union Iron Works Company, for the use of Bethlehem Shipbuilding Corporation, Ltd. vs. United States Shipping Board Emergency Fleet Corporation, December Sessions 1925, *No.* 11972, *at Law.*

The Master recommends that judgment be entered for the defendant as to the plaintiffs' claim, and for the plaintiffs as to the defendant's counter-claim.

B. Bethlehem Steel Company, for the use of Bethlehem Shipbuilding Corporation, Ltd., vs. United States Shipping Board Emergency Fleet Corporation, December Sessions 1925, *No.* 11974, *at Law.*

The Master recommends that judgment be entered for the defendant as to the plaintiff's claim, and for the plaintiffs as to the defendant's counter-claim.

C. Fore River Shipbuilding Corporation; Bethlehem Shipbuilding Corporation, Ltd., vs. United States Shipping Board Emergency Fleet Corporation, December Sessions 1925, *No.* 11976, *at Law.*

The Master recommends that judgment be entered for the defendant as to the plaintiff's claim, and for the plaintiffs as to the defendant's ~~counter-claim~~.

D. The United States of America, Complainant, vs. Bethlehem Steel Corporation; Bethlehem Shipbuilding Corporation, Ltd.; Bethlehem Steel Company; Fore River Shipbuilding Corporation; and Union Iron Works Company, Defendant, March Sessions 1923, *No.* 3315, *In Equity.*

The Master recommends that a decree be entered dismissing the Bill in Equity filed by the United States of America.

The dismissal of the Bill in Equity carries with it a decree dismissing the counter-claim filed by Bethlehem against the United States, for the reasons which have caused the Master to refuse Request No. 5 filed by Bethlehem for conclusions of law.

The United States having instituted this cause in the United States District Court for the Eastern District of Pennsylvania thereby concedes jurisdiction to this Court to entertain a counter-claim by Bethlehem as a set-off against the claim of the United States. As to such counter-claim, if found valid, this Court might set-off the amount thereof in reduction of any amount to which the United States were found entitled by a favorable decree. There is no authority, however, for the contention by Bethlehem that an affirmative judgment may be entered by this Court, in the Equity proceedings, in its

favor against the United States. The authorities are to the contrary, and the Master finds that this Court is without jurisdiction to award to Bethlehem the amount of its counter-claim in the sum of $8,839,820.80, with interest thereon, or any part thereof, because such claim exceeds the sum of $10,000, which determines the jurisdiction: United States v. Skinner & Eddy Corp'n, 35 Fed. (2d) 889; United States v. Turner, 47 Fed. (2d) 86; United States v. Pfitsch, 256 U. S. 547; See Note p. 553 Nassau Smelting Works v. United States, 266 U. S. 101.

E. Bethlehem Shipbuilding Corporation, Ltd., vs. The United States Shipping Board Emergency Fleet Corporation. December Sessions 1925, *No.* 11970, *at Law.*

The Master recommends that judgment be entered in favor of the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., and against the defendant, The United States Shipping Board Emergency Fleet Corporation, upon the following basis:

Upon the facts and the law found applicable thereto, the Master finds that Bethlehem is entitled to an award of the following:

Amount due on direct contracts—completed vessels—based on Wage Schedules set forth as Contentions C and D	$4,871,375.12
Amount due on direct contracts—uncompleted vessels	509,206.86
Total	$5,380,581.98
With interest from September 1, 1922, at the rate recommended by the Master,	

Plus Miscellaneous:		
1. Reconditioning Penna. R. R. Co. property at Wilmington	2,570.00	
2. Perley Morse deduction	90,019.55	92,589.55
With interest on Item 1 from June 1, 1920, and on Item 2 from Feb. 1, 1921, at the rate recommended by the Master.		
From the aggregate of the above items there should be deducted the Items conceded to the Government and Fleet Corporation as follows:		
1. Material sold to shipbuilder	23,013.96	
2. Surplus steel used by Shipbuilder	6,400.00	
3. Carfare and idle plant at Sparrow's Point	11,847.39	
4. Interest on advance payments	132,770.91	
5. Miscellaneous accounts receivable (50%)	27,064.17	201,096.43
With interest from April 17, 1925 at the rate recommended by the Master.		

The allowance of interest, where money, found by judicial proceedings to be due, has been unjustifiably withheld by the debtor from the creditor, is in the

nature of damages for such withholding. The measure of such damage is to be fixed by the tribunal awarding the judgment. Usually the legal rate of interest in the State of the forum is accepted as a fair measure to be applied. In many cases this measure, if applied, would produce an unfair result, and some other basis should be adopted. Frequently the rate of interest allowed is that which the debtor has earned with the moneys so withheld, but sometimes it is the amount, up to the legal rate, which the creditor could have earned had payment been received when due, or in other instances what the creditor has been obliged to pay for moneys temporarily secured to replace such unpaid debt.

In suits against the United States, interest is not allowable except when expressly provided for by contract or statute.

U. S. vs. Sherman, 98 U. S. 565;
Angarica vs. Bayard, 127 U. S. 251;
U. S. vs. North American Co., 253 U. S. 330.

There is no contract or statutory provision which would permit the allowance of interest upon the counter-claim set up by Bethlehem in the equity proceedings instituted by the United States in this District, if it should be found that the District Court of the United States for the Eastern District of Pennsylvania had jurisdiction to entertain the claim.

U. S. vs. Verdier, 164 U. S. 213.

In the suit of Bethlehem against the Fleet Corporation, while the latter is the nominal defendant, and liable for its contract obligations, the facts in this case show that the real defendant, ultimately to be called upon to pay whatever judgment, if any, may

be entered in favor of Bethlehem, is the United States. In the suit at law, it would seem that interest would be allowable to Bethlehem in any judgment obtained against the Fleet Corporation, even though ultimately such interest must be paid by the United States, and regardless of the fact that on the equity side of the Court, were Bethlehem to be awarded a judgment upon its counter-claim against the United States, no interest would be collectible.

The legal rate of interest in this District is 6% per annum, but under all the circumstances attending these cases, and in view of the further fact that during a substantial part of the time since payment became due, the going rate of interest has been substantially less than 6%, the Master has concluded that an allowance of interest to be computed at the rate of 6% per annum would not be justified.

The Master recommends that interest be allowed upon the several items from the due date for the payment thereof, as herein set forth, computed at the average of the rates allowable on deposits by member banks of the Clearing House Association of New York and Philadelphia, since the said due rates, under the Rules of these associations controlling interest rates.

During such periods, if any, when rates were not fixed by such Rules, the rate of interest to be applied shall be that fixed by the Rules next thereafter made effective. If the parties can agree upon what the average rate has been, the Master will receive a statement thereof and add it to his Report. If the parties cannot agree, then the Master will determine by other means what such rate has been and add this finding to his Report as the basis for his recom-

mendation of the allowance of interest in such judgment as the Court may enter.

The total to be computed, in accordance with the foregoing, will be the amount for which the Master recommends that judgment be entered in favor of Bethlehem Shipbuilding Corporation, Limited, upon the approval of this Report by the United States District Court for the Eastern District of Pennsylvania.

WM. CLARKE MASON,
Special Master and Referee.

December 19, 1935.

SUPPLEMENT TO THE REPORT OF THE SPECIAL MASTER AND REFEREE.

The Master gave due notice to counsel of record for the parties to the above entitled cause of the preparation of his proposed Report, and served copies thereof upon counsel as of December 19, 1935, with notice that the Report would be filed, in the United States District Court for the Eastern District of Pennsylvania, unless exceptions thereto were filed within thirty days.

Exceptions were filed on behalf of the United States of America and the United States Shipping Board Emergency Fleet Corporation, and exceptions were also filed on behalf of Bethlehem Shipbuilding Corporation, Ltd., all of which exceptions are set forth in full in the appendix hereto.

The Master received due notice that the parties to these causes could not agree as to what was the average rate of interest to be determined in accord-

ance with the method proposed by the Master in his proposed Report. The Master, therefore, has ascertained from available records of the Clearing House Associations of New York and Philadelphia information as to the rates of interest which were allowable on deposits by member banks of the said Associations under the rules of these Associations controlling interest rates during the periods for which interest may be allowed upon the amounts to be awarded in favor of Bethlehem, and finds that such average rate of interest so ascertainable is approximately two per cent. The Master therefore recommends an allowance of interest in such judgment as the Court may enter in favor of Bethlehem, at the rate of two per cent. per annum upon the amounts and for the periods set forth in this Report (pages 42-43).

The Master has given consideration to the one hundred and thirty-four exceptions filed to the proposed Report of the Master on behalf of the United States of America and the United States Shipping Board Emergency Fleet Corporation, and has also given consideration to the nineteen exceptions filed to the proposed Report of the Master on behalf of Bethlehem Shipbuilding Corporation, Ltd.

These exceptions show the extent to which facts and inferences from facts are viewed differently by different minds. While the Master regards with respect the knowledge of the details of these cases by the respective counsel for the several parties, and also their sincere belief in the cause which they represent, the Master has found no sufficient reason in the exceptions filed to his proposed Report to induce him to change the findings and conclusions ex-

pressed therein. However, as to Exception No. 25 filed by Bethlehem, some comment seems to the Master to be due at this time:

The Request No. 25 reads as follows:

> "With the exception of the 5,100 ton cargo boats built under Contract No. 314, the average cost to the Fleet Corporation of the cargo and tank vessels of each type and size built by Bethlehem under the contracts in suit, including the fixed fee and half-savings, is less than the average price paid by the Fleet Corporation to other shipbuilders under both lump sum and cost plus contracts for vessels of substantially similar type and size constructed during approximately the same period. (Brown, pp. 378-379, 402.)"

The evidence before the Master shows that, without considering the 5100 ton cargo boats, as to the vessels built by Bethlehem under the contracts in suit, substantially all of them, were built under specifications providing for some more expensive items than the vessels of substantially similar type and size constructed during approximately the same period by other shipbuilders under lump-sum and cost-plus contracts. The result of difference in specifications increased the aggregate cost, according to the testimony of witness Brown, by the sum of at least $880,000. The testimony in the record justifies the conclusion that with or without adjustment, to reflect the difference in specifications, the cost to the Government of the vessels built under the Bethlehem contracts was less, for the value received, than the cost under contracts with other shipbuilders. (According to Brown this difference is $8,800,000, (R. pp. 405-406)) The requested finding No.

25, however, fails to reflect the required adjustment in specifications to create the basis for the comparison, called for by the words of the request, between the vessels of substantially similar type and size constructed by Bethlehem and the other shipbuilders. If such qualification were to be found in the language of the request, the request should be affirmed. The Master has substantially so found in his general findings.

The Master now dismisses each and every of the exceptions filed by the United States of America and the United States Shipping Board Emergency Fleet Corporation to the Report of the Special Master and Referee, and the Master now dismisses each and every of the nineteen exceptions filed by Bethlehem Shipbuilding Corporation, Ltd. to the Report of the Special Master and Referee.

The Master files this his Report to the United States District Court for the Eastern District of Pennsylvania in respect of the above entitled causes, heretofore referred to him by this Honorable Court.

Respectfully submitted,

WM. CLARKE MASON,
Special Master and Referee.

February 7, 1936.

EXHIBIT A.

AMOUNT OF CLAIMS OF THE GOVERNMENT AND OF BETHLEHEM.

The parties have stipulated that if the Government were entitled to the full amount of its claim,

representing overpayments made to Bethlehem without allowing any profits to Bethlehem, the amount thereof would be $19,654,856.32, with interest from September 1, 1922 to date of final judgment.

The parties on the other hand, have stipulated however, that if Bethlehem were entitled to the full amount of its claim, giving effect to the several contentions as to the Wage Schedule, the amount thereof would be as follows:

	Amount
DIRECT CONTRACTS—COMPLETED VESSELS	
1. On Bethlehem's contention (a) and (d)	$5,286,583.20
2. On Bethlehem's contention (c) and (d)	4,871,375.12*
3. On Fleet Corporation contention (b) and (e)	375,112.18*
4. On Fleet Corporation's contention (b) and (f)	1,546,726.30*
DIRECT CONTRACTS—UNCOMPLETED VESSELS	
1. As agreed between the parties	509,206.86*
MISCELLANEOUS	
1. Reconditioning Penna. R. R. Property at Wilmington	2,576.00**
2. Perley Morse deduction	90,019.55***
LESS ITEMS CONCEDED TO GOVERNMENT AND FLEET CORPORATION	
1. Material sold to Shipbuilder $23,013.96	
2. Surplus steel used by Shipbuilders 6,400.00	
3. Carfare and Idle	

Plain at Sparrow's Point.	11,847.39	
4. Interest on advance payments	132,770.91	
5. Miscellaneous accounts receivable (30%)	27,064.17	201.096.43****

NOTE.

* Interest from Sept. 1, 1922
** Interest from June 1, 1920
*** Interest from Feby. 1, 1921
**** Interest from April 17, 1925

EXHIBIT B. (Copy of Computation prepared by Fleet Corporation).

UNITED STATES v. BETHLEHEM SHIPBUILDING CORPORATION, ET AL.

STATEMENTS SHOWING THE PERCENTAGES OF BETHLEHEM'S CLAIMED PROFITS TO THE ACTUAL COSTS ELIMINATING INCREASED WAGES AND CHANGES AND EXTRAS (GROUP A) AND TO THE ACTUAL COSTS INCLUDING THOSE ITEMS (GROUP B)

	Contract Number	Actual Base Cost Exhibit "B 32"	Excess in Estimate termed "Savings"	Bethlehem's Claim to ½ of "Savings"	Fixed Fee	Total ½ "Savings" plus Fixed Fee	Percentage of "Savings" plus Fixed Fee to Actual Base Cost
Group "A"	177	$ 19,957,425.33	5,482,574.67	2,741,287.33	2,520,000.00	5,261,287.33	26.36
	178	8,336,945.15	549,054.85	274,527.42	855,000.00	1,129,527.42	13.55
	179	4,676,780.69	1,533,219.31	766,609.65	600,000.00	1,366,609.65	29.22
	183	4,527,029.93	1,067,970.07	533,985.03	555,000.00	1,088,985.03	24.06
	184	4,566,482.44	1,293,517.56	646,758.78	670,000.00	1,316,758.78	28.84
	191	5,823,323.77	2,690,676.23	1,345,338.11	851,400.00	2,196,738.11	37.72
	196	985,523.24	309,476.76	154,738.38	129,500.00	284,238.38	28.84
	226	8,797,878.20	3,087,121.80	1,543,560.90	1,175,000.00	2,718,560.90	30.90
	230	2,862,459.88	1,287,540.12	643,770.06	415,000.00	1,058,770.06	36.99
	299	4,226,839.69	1,323,160.31	661,580.15	555,000.00	1,216,580.15	28.78
	300	4,181,637.20	1,818,362.80	909,181.40	600,000.00	1,509,181.40	36.09
	301	13,870,527.20	4,954,472.80	2,477,236.40	1,882,500.00	4,539,736.40	31.43
	314	10,177,668.19	1,362,331.81	681,165.91	1,154,000.00	1,835,165.91	18.03
		$ 92,990,520.91	26,759,479.09	13,379,739.52	11,962,400.00	25,342,139.52	27.25

	Contract Number	Actual Cost	Excess in Estimate termed "Savings"	Bethlehem's Claim to ½ of "Savings"	Fixed Fee	Total ½ "Savings" plus Fixed Fee	Percentage of "Savings" plus Fixed Fee to Actual Cost
Group "B"	177	$ 23,466,351.20	5,482,574.67	2,741,287.33	2,520,000.00	6,261,287.33	23.42
	178	9,891,540.18	549,054.85	274,527.42	855,000.00	1,129,527.42	11.42
	179	5,556,330.41	1,533,219.31	766,609.65	600,000.00	1,366,609.65	24.60
	183	5,310,843.57	1,067,970.07	533,985.03	555,000.00	1,088,985.03	20.50
	184	6,140,519.13	1,293,517.56	646,758.78	670,000.00	1,316,758.78	21.44
	191	6,349,258.11	2,690,676.23	1,345,338.11	851,400.00	2,196,738.11	34.60
	196	1,123,782.08	309,476.76	154,738.38	129,500.00	284,238.38	25.29
	226	10,904,547.82	3,087,121.80	1,543,560.90	1,175,000.00	2,718,560.90	24.93
	230	3,218,669.91	1,287,540.12	643,770.06	415,000.00	1,058,770.06	32.89
	299	4,870,124.27	1,323,160.31	661,580.15	555,000.00	1,216,580.15	24.98
	300	5,125,053.23	1818,362.80	909,181.40	600,000.00	1,509,181.40	29.45
	301	15,344,832.08	4,954,472.80	2,477,236.40	1,882,500.00	4,359,736.40	28.41
	314	13,070,101.09	1,362,331.81	681,165.91	1,154,000.00	1,835,165.91	14.04
		$109,371,953.06	26,759,479.09	13,379,739.52	11,962,400.00	25,342,139.52	23.17

REQUESTS FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW SUBMITTED UPON BEHALF OF THE UNITED STATES OF AMERICA AND THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION.

FINDINGS OF FACT.

1. Bethlehem Shipbuilding Corporation, Ltd., hereafter referred to as "Bethlehem," represents a consolidation, effected at or about the time of its organization in October, 1917, of five shipbuilding companies which had theretofore been subsidiaries of the Bethlehem Steel Corporation (R., p. 12).

Affirmed.

2. Since the organization of Bethlehem all of its stock has been owned by the Bethlehem Steel Corporation (R., p. 12).

Affirmed.

3. The names of Bethlehem's five subsidiary shipbuilding companies and the names and locations of their respective plants are as follows (R., p. 13):

Name	*Plant*	*Location*
Union Iron Works Co.	Union	San Francisco, Calif.
Harlan & Hollingsworth Corp.	Harlan	Wilmington, Del.

Name	*Plant*	*Location*
Samuel L. Moore & Sons Corp.	Moore	Elizabethport, N. J.
Fore River Shipbuilding Co.	Fore River	Fore River, Quincy, Mass.
Penn-Mary Steel Co.	Sparrows Point	Sparrows Point, Md.

Affirmed.

4. Each of the foregoing subsidiary companies at the time of said consolidation was an "old line," experienced shipbuilding company, employing a large, efficient and well equipped organization engaged in the business of building steel ships (R., pp. 13-4; Bill, par. 20).

Affirmed.

5. As a result of said consolidation, Bethlehem took over the operations of all five plants and became the largest shipbuilding concern in the world, both with respect to number of shipways and number of employees (R., pp. 13-4).

Affirmed.

6. During the summer of 1917 an extraordinary emergency of war existed and rendered it necessary for the United States to control the entire shipbuilding, steel, coal, transportation, and other industries of the United States, and to requisition all ships suitable for war purposes then under construction at the various shipyards throughout the United States, and to enter into contracts with ship-

builders for the construction of as many additional vessels as it was possible for each shipbuilder to construct, and to have the same constructed in the least possible period of time (Bill, par. 22).

Affirmed.

7. The conditions and emergency described in the preceding request No. 6 were well known to the public in general and to Bethlehem and its representatives (Bill, par. 22).

Affirmed.

8. On August 3, 1917, the Fleet Corporation, acting upon behalf of the United States, requisitioned all merchant ships over 2,500 deadweight tons, then under construction in all shipyards throughout the United States, including those of the aforesaid five companies which were then subsidiaries of the Bethlehem Steel Corporation (Bill, par. 15).

Affirmed.

9. In the negotiations relating to the contracts in controversy, copies of which appear as Exhibit C, Bethlehem was represented by Joseph W. Powell and Harry Brown (R., p. 16).

Affirmed.

10. Powell became president of the Fore River Shipbuilding Corporation in 1914 and remained as such until he left the employment of Bethlehem in December, 1920 (R., pp. 643, 636-7). Upon the organization of Bethlehem, he became its vice-president and operating manager in charge of all its ac-

tivities, including the negotiation and execution of shipbuilding contracts (R., pp. 17, 643).

Affirmed.

11. From 1903 until Bethlehem's organization, Brown was employed by the Fore River Shipbuilding Corporation and during said period was in general charge of all technical work (R., p. 18). Upon the organization of Bethlehem, Brown became its technical manager, his duties including supervision of cost estimating for all its shipyards, and continued to occupy this position until 1922 when his employment by Bethlehem was temporarily terminated (R., pp. 18-9, 24). During October, 1924, Brown was re-employed by Bethlehem and since that date has remained in its employment for the sole purpose of assisting it in connection with the present litigation (R., p. 91).

Affirmed.

12. At the time of the negotiations relating to the contracts in controversy Powell and Brown were recognized as being two of the ablest and most experienced shipbuilders and estimators of shipbuilding costs in the United States (Roberts' Record, p. 162; R., p. 18).

Affirmed.

13. In the negotiations relating to the contracts in controversy, the Fleet Corporation was represented by Charles Piez, Admiral F. T. Bowles and G. S. Radford (R., p. 876).

Affirmed. These representatives were advised by Daniel H. Cox, technical expert and Chester Cuthill, counsel for Fleet Corporation.

14. Piez had joined the Fleet Corporation as vice-president during November, 1917 and became its general manager on or about December 17, 1917 (R., p. 876).

Affirmed.

15. At the time of the negotiations relating to the contracts in controversy, Piez had complete executive charge of the affairs of the Fleet Corporation, with power to negotiate and execute all contracts upon its behalf, including the contracts in controversy (R., pp. 850-1, 876, 15).

Affirmed.

16. At the time of such negotiations Bowles was manager of the division of steel ship construction of the Fleet Corporation, and Radford was manager of its contract division (R., pp. 979, 983).

Affirmed.

17. Neither Bowles nor Radford had authority to make or execute shipbuilding contracts upon behalf of the Fleet Corporation (R., pp. 850-1, 876).

Affirmed.

18. Bowles died some time prior to the previous hearing before Justice Roberts in May, 1929, (R., p. 14).

Affirmed.

19. At the time of the negotiations resulting in the contracts in controversy, it was understood by all parties concerned that the Fleet Corporation shipbuilding program would call for capacity production at each of Bethlehem's shipyards, and that insofar as tank and cargo ships were concerned,

Bethlehem would be permitted to build ships which were duplicates or substantially similar to ships previously constructed at such shipyards; in order to facilitate and expedite construction (R., pp. 30, 32, 269, 323-4, 885; Ex. G-104, Doc. Ev., pp. 201-3; Roberts' Record, pp. 275, 645-6).

Affirmed.

20. As a result of a conference which took place on December 12, 1917, between Powell, Brown and representatives of the Fleet Corporation, Powell and Brown (R., p. 75) prepared and submitted to the Fleet Corporation a "Proposal Covering Supply of Additional Tonnage," dated December 13, 1917, which stated, *inter alia* (Ex. G-104, Doc. Ev., p. 201):

> "Referring to conference on December 12th, 1917, between representatives of the Emergency Fleet Corporation and of this Corporation, the following proposal is submitted for the construction of additional vessels at the various shipbuilding plants of the Bethlehem Shipbuilding Corporation, Ltd. * * *
>
> "Because of the unprecedented conditions surrounding the Labor and Material market, it is impracticable to estimate within a reasonable percentage what will be the actual cost of construction, and it is therefore impossible to submit fixed prices for any of these vessels, except upon a basis so far above estimated cost that any figure acceptable to this Company would not be acceptable to the Emergency Fleet Corporation. It is proposed, however, that they be constructed on the basis of actual cost plus a

fee, with an agreed upon probable cost, this Company to be paid in addition to the fee one-half of any saving that may be made below this cost figure, and with the further provision that the estimated cost figure will be increased due to any increase in rates of wages that may be approved by the Emergency Fleet Corporation. The definition of cost and the general terms of the contract so far as applicable, to be the same as those for the eighty-five destroyers, contracts for which were signed on December 6th, 1917, by the Navy Department and this Company. The basis of fees and estimated cost to be such as to offer a reasonable probability of a net earning after paying all War and Excess Profit taxes as today existing, of Ten Per cent (10%) of the present estimated cost of construction.

"In the following proposals, it is the intention to supply so far as possible, duplicates of vessels already constructed at the various Plants, rather than to adopt the so-called standard vessels of the Emergency Fleet Corporation or vessels actually built at other yards. This offers the obvious advantage of giving to each plant a class of work with which it is familiar from actual experience and for which all plans, order sheets and very often Mould Loft work is immediately available. The adaptation of plans from one Yard to another requires at best considerable work by the Draughting Room and this Company is experiencing at this time a serious shortage of this class of labor. It further necessitates the maximum amount of Mould Loft work, and here again at nearly all of its

Yards the total output is dependent on the capacity of the Mould Loft to supply the necessary information to the Shipyard. * * *

"This Company has contracts with the Midvale Steel & Ordnance Company, dated March 29th, 1917, and the Central Iron & Steel Company, dated March 19th, 1917, for a total of 6,850 tons of steel plates and marine boiler steel, less than 500 tons of which is marine boiler steel, at Six Cents (6¢) per pound for the steel plates and Fifteen Cents (15¢) per pound for the boiler steel, which are firm contracts, and which steel it is obligated to take for use in Merchant Vessels. Since the entry of the Emergency Fleet Corporation into the field of ship purchases and since its commandeering order forbidding the sale of ships to any other parties, this Company's proposal is based on the understanding that it will be allowed to use this amount of steel in its various vessels at the prices covered by its contracts, namely Six Cents (6¢) for Steel Plates and Fifteen Cents (15¢) per pound for Boiler Steel. * * *

"Until the Emergency Fleet Corporation has settled on the types and sizes of vessels that it may desire to order from us for construction at the above Plants, no definite proposals as to fees per ton and estimated costs are submitted. * * *

"It is requested that the proposals in this letter be considered immediately and that representatives of this Company be called in conference, with a view to settling the Emergency

Fleet Corporation's requirements for vessels from its Yards, at the earliest practicable date."

Affirmed.

21. Copies of the destroyer contracts of December 6, 1917, referred to in Bethlehem's proposal of December 13, 1917, appear as Exhibits G-157, G-158.

Affirmed.

22. Following a conference between Powell, Brown and representatives of the Fleet Corporation which took place in Washington on the afternoon of December 18, 1917, Bowles addressed the following letter to Bethlehem at South Bethlehem, Pennsylvania (Ex. G-110, Doc. Ev., p. 229):

"December 19, 1917

Bethlehem Shipbuilding Corporation,
South Bethlehem, Penna.

Gentlemen:

Proposal covering Supply of Additional Tonnage

In reply to your letter of the 13th instant, and in accordance with our conference of yesterday afternoon with your Messrs. Powell and Brown, it is requested that you submit proposals for the following program:

(a) 5-10,000 ton tankers, to be built at your Union Plant;

(b) 2-10,000 ton Union tankers, and 2-10,000 ton troop ships, to be built at your Sparrows Point Plant;

(c) 3 cargo vessels, and 1 tanker of about 7500 tons, to be built at your Harlan Plant;

(d) Such number of sea-going tugs as you believe can be promptly constructed at the Moore Plant;

(e) 3-9,100 ton tankers, to be constructed at the Fore River Plant.

All of the above vessels are to be coal burners, except the tankers and troop ships, which will be oil burners, and all are to be fitted with Scotch boilers except the troop ships.

Plans and specifications of all vessels, that you are proposing to build from your own plans and specifications, must be submitted for approval.

Very truly yours,

F. T. Bowles,
General Manager.

F. T. B.
Rd.
GSR:EMS"

Affirmed.

23. On December 20, 1917 (R., pp. 732, 744), Powell handed to Piez and Radford a "proposal Covering Supply of Additional Tonnage," dated December 19, 1917, reading, in part, as follows (Ex. G-109, Doc. Ev., p. 224):

"On Tuesday, December 18th, 1917, in conference with the Vice-President of the Emergency Fleet Corporation and his representatives, the Bethlehem Shipbuilding Corporation,

Ltd., was instructed to submit a proposal, in accordance with the terms of its letter of the 13th instant, for vessels to be built at its various yards, as follows:

"THE UNION PLANT:

"Five (5) tank vessels of about 10,100 tons d. w., 2600 H. P., 11 knots reciprocating engines, oil-burning Scotch boilers in general duplicates of Hull No. 140 commandeered by the Emergency Fleet Corporation on August 3, 1917. Vessels to be complete with armed guard equipment and war zone requirements in force at this date.

"SPARROW'S POINT PLANT:

"Three (3) tank vessels of about 10,100 tons d. w., duplicates of those above described to be built at the Union plant.

"And two (2) troop ships, in general in accordance with the Emergency Fleet Corporation's design and specifications.

"HARLAN PLANT:

"Three (3) tank vessels of about 7500 tons d. w. (including two vessels to be built instead of two Savannah Lines ships, contracts for which have been cancelled by the Emergency Fleet Corporation), 11 knots, reciprocating engines, oil-burning Scotch boilers, in general duplicates of Hull No. 440, built for the Pan-American Petroleum & Transport Co., complete with armed guard equipment and war zone requirements in force at this date.

"And three (3) cargo vessels of about 7400 tons, 11 knots, 2500 H. P., reciprocating engine, coal-burning Scotch boilers, in general duplicates of Hull No. 169 building at the Sparrow's Point Plant and commandeered by the Emergency Fleet Corporation on August 3rd, 1917, complete with armed guard equipment and war zone requirements in force at this date.

"MOORE PLANT:

"Twenty (20) sea-going tugs, of about 150 ft. in length, in general accordance with the Emergency Fleet Corporation's design and specifications.

"FORE RIVER PLANT:

"Three (3) tank vessels of about 9100 tons d. w., 11 knots, reciprocating engines, in general duplicates of Hulls 268 and 269 commandeered by the Emergency Fleet Corporation on August 3, 1917, last complete with armed guard equipment and war zone requirements in force at this date. * * *

"This company's letter of December 13th proposed to construct such vessels as may be ordered by the Emergency Fleet Corporation for actual cost plus a fee, with an agreed-upon base cost, this company to be paid, in addition to the fee, one-half of any saving that may be made below this base cost, and with a further provision that the said base cost will be increased, due to any increase of rate in wages that may be paid by the order of the Emergency Fleet Corporation. This would not apply in the

case of the troop ships, as it is impossible to make an approximate estimate of their cost, and it is, therefore, proposed that, if these vessels must be built at the Sparrow's Point Plant, they shall be constructed on a straight cost and percentage basis.

"The fixed fees and estimated costs of the various vessels are as follows:

	Fee each vessel	*Estimated Cost, exclusive of fee*
10,100-ton tank vessel	$240,000	$2,181,600
9,100-ton " "	220,000	1,983,800
7,500-ton " "	175,000	1,680,000
Troop ship	15% of cost	
7,400-ton cargo vessel	150,000	1,450,000
Sea-going tugs	35,000	300,000

"As stated in this company's letter of the 13th instant, it is impracticable to estimate within a reasonable percentage what will be the actual cost of construction but, based upon a close study of the facts affecting cost, and the knowledge of increase therein in the last two years, and making allowances as seem reasonable to cover the next eighteen (18) months, the period of construction of these vessels—the estimates for the 10,000-ton tank vessels and the 7400-ton cargo vessels are as follows:

	10,000-*ton tank vessel per d. w. ton*	7,400-*ton-cargo vessel per d. w. ton*
Labor, materials and operating expense	$187.50	$168.50
Administrative, selling & general expense	18.75	16.85
Extra cost of steel, as per page 6, letter of December 13th, averaged over all extra tonnage	2.50	2.50
Cost of armed guard equipment and war zone requirements	7.00	8.00
	$215.75	$195.85
Say	$216.	$196.

"The figures quoted above for the smaller tank vessels are based upon those given for the 10,000-ton vessel. Average costs have been used between East and West Coast construction to cover the 10% difference in labor costs and the 5% additional material cost for vessels built on the West Coast as compared with those in the East Coast yards.

"Representatives of this company will call on the Emergency Fleet Corporation to personally consider the subject-matter of this letter, with a view to the earliest determination as to the work which it may be desired to undertake, and, it is needless to add, such orders as are given it

will receive its best efforts, with a view to their completion at the earliest date consistent with obligations already assumed for the United States Navy and for the Emergency Fleet Corporation."

Affirmed.

24. On the morning of January 3, 1918 (R., pp. 686, 748), before any views had been expressed by the Fleet Corporation concerning the estimates submitted in Bethlehem's proposal dated December 19, 1917, Powell handed Piez a letter, dated January 3, 1918, reading as follows (Ex. G-116, Doc. Ev., p. 256):

"January 3rd, 1918

"Mr. Charles Piez,
Vice President and General Manager,
Emergency Fleet Corporation,
Washington, D. C.

Dear Sir:

"Referring to this company's letter of the 19th ultimo, submitting a proposal covering the supply of additional tonnage, further study of this situation at the Union Plant, San Francisco, California, has showed that it will be practicable to undertake the construction of ten (10) tank vessels instead of five (5), or of six (6) additional 11,800 ton deadweight cargo vessels, a total of twelve (12) instead of six (6) of all of these vessels to be delivered prior to July 1, 1919. This would entail the construction of additional ways and a total additional capital expenditure of about $500,000 to be financed by

the Emergency Fleet Corporation as proposed in our letter of the 13th ultimo.

We further refer to my conference with the Vice President and General Manager of the Emergency Fleet Corporation on Friday, the 21st ultimo. This will confirm the statement then made that while this company cannot undertake any capital expenditures at its expense, if the terms in our proposal do not otherwise meet with the Emergency Fleet Corporation's approval, we are prepared to accept the order to construct these vessels on such terms as may be personally determined by Mr. Charles Piez, the Vice President and General Manager, and strongly urge there be no delay in placing this order, as we are making this offer because of our knowledge of the vital emergency now confronting this nation in connection with the requirements for additional merchant vessels.

Yours very truly,

Bethlehem Shipbuilding
Corporation, Ltd.,

By J. W. Powell,
Vice President."

25. Upon receipt of Powell's letter of January 3, 1918, Piez arranged a conference between Powell, Brown, Bowles and Radford which took place on the afternoon of that date and lasted about five hours (R., pp. 688, 748-9, 700).

Affirmed.

26. Neither Bowles nor Radford was advised either prior to or during this conference as to the foregoing offers which had been made by Powell to Piez on December 21, 1917, and January 3, 1918 (R., pp. 752-4, 1010-11, 878-9, 889; Ex. G-117, Doc. Ev., 258).

Affirmed.

27. The conference of January 3, 1918, related to the following tankers and cargo ships which had previously been referred to in Bethlehem's proposals, and which were subsequently included in the following contracts, dated December 31, 1917, and were to be built at the following respective shipyards (R., pp. 630-4):

Type	*Number*	*Approximate dead-weight tonnage*	*Plant*	*Contract Numbers*
Tank	15	10,100	Union (12)	177
			Sparrow's Point (3)	179
Tank	3	9,100	Fore River	183
Tank	3	7,500	Harlan	178
Cargo	4	7,400	Harlan (3)	178
			Sparrow's Point (1)	196
Cargo	4	11,800	Union	191

Affirmed. These contracts were executed February 1, 1918.

28. Bethlehem's subsequent proposals and the correspondence (Exs. G-122, -125, -126, -127, -128, -130, -132, -133, -134, -135), resulting in the later

contracts in controversy (Ex. C), related to duplicates of the ships covered by the first series of contracts dated December 31, 1917, with the exception of seven cargo ships of approximately 5,100 deadweight tons to be built at its Harlan shipyard.

Affirmed.

29. The total number of tank and cargo ships of each type covered by all of the contracts in controversy, and the respective plants where such ships were to be constructed, are as follows (R., pp. 630-4):

Type	*Number*	*Approximate D. W. T.*	*Plant*	*Contract Numbers*
Tank	28	10,000	Union (18)	177
				301
			Sparrow's Point (10)	179
				226
				300
Tank	6	9,100	Fore River	183
				299
Tank	6	7,500	Harlan	178
				314
Cargo	12	11,800	Union	191
				230
				301
Cargo	7	7,400	Harlan (3)	178
			Sparrow's Point (4)	196
				226
Cargo	7	5,100	Harlan	314

Affirmed.

30. All of the tank and cargo ships referred to in the contracts in controversy, with the exception of the seven cargo ships of approximately 5,100 deadweight tons to be built at Harlan, represented Bethlehem's standard types of ships, being duplicates of or substantially similar to ships previously constructed at its various shipyards, as well as ships there under construction at the time of the negotiations relating to such contracts (R., pp. 323-4. See Govt. Brief, Appendix, pp. 1a to 18a).

Affirmed.

31. The twenty-eight tankers of approximately 10,100 deadweight tons covered by Bethlehem's proposals and the contracts in controversy were substantially duplicates of Hulls Nos. 140, 141 and 130, which had been completed at its Union Plant, on October 6, June 7 and February 7, 1917, respectively (Exs. G109, 104, 6; Doc. Ev., pp. 207, 224, 578, R., pp. 578-9).

Affirmed.

32. At the time of the negotiations relating to the first series of the contracts in controversy dated December 31, 1917, the following tankers of the following approximate deadweight tonnages were under construction at the Union Plant and were actually completed on the following dates (Ex. G59, Doc. Ev., pp. 37, 42; Ex. G3):

Hull Number	*Approximate Deadweight Tonnage*	*Date of Completion*
143	10,117	Jan. 9, 1918
144	10,117	Mch 1, 1918

Hull Number	Approximate Deadweight Tonnage	Date of Completion
145	10,100	Mch. 11, 1918
146	10,100	Apr. 30, 1918
148	10,205	Apr. 30, 1918
149	10,205	June 25, 1918

Affirmed.

33. The six tankers of approximately 9100 deadweight tons, covered by Bethlehem's proposals and the contracts in controversy, were substantially similar to Hulls Nos. 253 and 254, which had been completed at its Fore River Plant on June 30, 1917, and July 22, 1917, respectively (R., pp. 570-1).

Affirmed.

34. The said six tankers of approximately 9100 deadweight tons were also substantially similar to Hulls Nos. 244 and 245, completed at Bethlehem's Fore River Plant during February and April, 1916, respectively.

Affirmed.

35. The said six tankers of approximately 9100 deadweight tons were also substantially similar to Hulls Nos. 269 and 269, which were under construction at Bethlehem's Fore River shipyard in December, 1917 (Exs. G104-109, Doc. Ev., pp. 210-11, 225, R., p. 571).

Affirmed.

36. The six tankers of approximately 7500 deadweight tons, covered by Bethlehem's proposals and the contracts in controversy, were substantially

similar to Hulls Nos. 440 and 441 which had been completed at its Harlan shipyard, during July, 1916, and May, 1917, respectively (Exs. G31, 6, Doc. Ev., p. 578).

Affirmed.

37. The said six tankers of approximately 7500 deadweight tons were substantially similar to Hulls Nos. 442, 446, and 449, which were under construction at Bethlehem's Harlan shipyard during December, 1917.

Affirmed.

38. The seven cargo ships of approximately 7400 deadweight tons covered by Bethlehem's proposals and the contracts in controversy were substantially similar to Hull No. 167, which had been completed at its Sparrow's Point shipyard, on December 20, 1917 (Ex. G6, Doc. Ev., p. 578; R., pp. 369, 370, 581).

Affirmed.

39. The said seven cargo ships of approximately 7400 deadweight tons were also substantially similar to Hulls Nos. 169 and 170 which were under construction at the Sparrow's Point shipyard, in December, 1917, and which were actually completed on June 24 and July 25, 1918, respectively (Exs. G107, 104, 109, Doc. Ev., pp. 217, 209, 225; Ex. G3).

Affirmed.

40. The said twelve cargo ships of approximately 11,800 deadweight tons covered by Bethlehem's proposals and the contracts in controversy were substantially similar to the Hulls Nos. 132 to 139,

inclusive, and Hull No. 142, completed at Bethlehem's Union shipyard, at various dates from January 31, 1917, to August 25, 1917 (Ex. G6, Doc. Ev., p. 578; R., pp. 572-577).

Affirmed.

41. At the time of the negotiations relating to the first series of contracts in controversy, dated December 31, 1917, eight cargo ships of approximately 12,000 deadweight tons (being Hulls Nos. 162 to 169, inclusive) were then under construction at Bethlehem's Union shipyard.

Affirmed.

42. The cost accounting methods employed by Bethlehem in compiling and recording costs of ships constructed at its various shipyards, both prior and subsequent to the negotiations relating to the contracts in controversy, were substantially as described in Exhibit G168 (R., pp. 1021-3).

Affirmed.

43. Prior to the negotiations relating to the contracts in controversy, Bethlehem, through its subsidiary shipbuilding companies, had had many years of practical experience in obtaining and recording shipbuilding costs at its respective shipyards (Ex. G168).

Affirmed.

44. Under the cost accounting system prevailing at Bethlehem's various shipyards prior to the negotiations relating to the contracts in controversy, shipbuilding costs were compiled in three main divisions and approximately fifty subdivisions, each

of which was designated as a "job" and referred to by approximate job number (Ex. G168; R., pp. 39, 40).

Affirmed.

45. The said three main cost divisions represented material, labor and overhead expense, the general nature of the items included in each of these divisions being as described in Exhibit G168.

Affirmed.

46. The principal subdivision with respect to material represented substantially all materials required for the completion of the structural hull and was designated in Bethlehem's accounting system as "Job 12."

Affirmed.

47. Exhibit G6 (Doc. Ev., p. 578) correctly sets forth the general characteristics, the dates of keel laying and delivery, and the actual cost of material, labor and operating expense, respectively, with respect to the ships referred to therein.

Affirmed.

48. At the time of the negotiations relating to the contracts in controversy, Bethlehem was in a position to determine from its available cost records, the total cost of material in connection with the respective ships previously completed at its respective shipyards.

Affirmed.

49. At the time of the negotiations relating to the contracts in controversy, Bethlehem was in a

position to determine from its available cost records the total cost of "Job 12" materials and the unit and total prices of plates and shapes, respectively, required for the completion of "Job 12" in connection with the respective ships previously completed at its respective shipyards.

Affirmed.

50. At the time of the negotiations relating to the contracts in controversy, Bethlehem was in a position to determine from its available cost records the respective costs of the principal items of material, exclusive of "Job 12" materials, required for the construction of the respective ships previously completed at its respective shipyards.

Affirmed.

51. At the time of the negotiations relating to the contracts in controversy, Bethlehem was in a position to determine from its available cost records the total cost of direct labor in connection with the respective ships previously completed at its respective shipyards.

Affirmed.

52. At the time of the negotiations relating to the contracts in controversy, Bethlehem was in a position to determine from its available cost records the respective average hourly earnings of direct labor required for the construction of the respective ships previously completed at its respective shipyards.

Affirmed.

53. At the time of the negotiations relating to the contracts in controversy, Bethlehem was in a posi-

tion to determine from its available cost records the respective hours of direct labor required for the construction of the respective ships previously completed at its respective shipyards.

Affirmed.

54. At the time of the negotiations relating to the contracts in controversy, Bethlehem was in a position to determine from its available cost records the plant operating or overhead expense in connection with the ships previously constructed at its respective shipyards.

Affirmed.

55. At the time of the negotiations relating to the contracts in controversy, Bethlehem was in a position to determine from its available cost records the administrative, selling and general expense in connection with the ships previously constructed at its respective shipyards.

Affirmed.

56. At the time of the negotiations relating to the contracts in controversy, Bethlehem was in a position to determine from its available cost records the past depreciation charges at its respective shipyards as well as the depreciation charged against the cost of construction of the respective ships previously completed at said shipyards.

Affirmed.

57. At the time of the negotiations relating to the contracts in controversy the Fleet Corporation, by reason of war powers conferred upon it by Act of Congress and Executive Order, was authorized to

place orders with any manufacturers for any or all of their respective products which might be required for ship construction, at reasonable prices to be determined by it. If these prices were not acceptable to the manufacturers, their only recourse was to accept 75% thereof, with leave to sue the United States for such additional sum as might afford just compensation. All material orders placed by the Fleet Corporation took precedence over all private orders and contracts, and non-compliance therewith authorized it to take possession of the respective plants and use the same as it saw fit (Bill, Par. 7, Suit No. 3315).

Denied as stated. The shipbuilders were not required to take any contracts unless the terms were satisfactory. The Government had power to take possession of the shipyards but could not compel the performance of unacceptable contracts.

58. At the time of the negotiations relating to the contracts in controversy, government control of transportation and the allocation of raw materials also offered a practical means of controlling the prices of shipbuilding materials, as well as the manufacture and delivery of such materials.

Denied. There was no assurance of such control.

59. Exhibit G176 sets forth various price fixing agreements entered into between the War Industries Board, representing the Government, and the principal iron and steel manufacturers throughout the United States, including the Bethlehem Steel Corporation and its affiliated companies, as well as the various price recommendations of the Committee

on Steel and Steel Products of the American Iron & Steel Institute (R., p. 1020).

Affirmed.

60. By agreement between the War Industries Board and said iron and steel manufacturers, officially announced on September 24, 1917, maximum prices were established for iron ore, coke, pig iron, steel bars, shapes and plates, said prices being subject to revision January 1, 1918.

Affirmed.

61. Said iron and steel manufacturers were also advised by said announcement that:

> Measures will be taken by the War Industries Board for placing orders and supervising the output of the steel mills in such manner as to facilitate and expedite the requirements of the Government and its Allies for war purposes, and to supply the needs of the public according to their public importance and in the best interest of all, as far as practicable."

Affirmed.

62. By agreements between the War Industries Board and said iron and steel manufacturers officially announced by said Board on October 12, 1917, and November 6, 1917, respectively, maximum prices were established for the remaining principal basic, intermediate and finished iron and steel products required in ship construction (Ex. G176), said prices being subject to revision January 1, 1918.

Affirmed.

63. By said announcement of October 12, 1917, said iron and steel manufacturers were also advised that said maximum prices had been agreed upon on the assurance of those representing the steel industry that said prices equitably adjusted the relations of the steel interests to each other and would assist them in fulfilling their obligations to give the country one hundred per cent. of production at not to exceed said prices, and again stated that:

> "Measures will be taken by the War Industries Board for placing orders and supervising the output of the steel mills in such manner as to facilitate and expedite the requirements for war purposes of the Government and those nations associated with us, and to supply the needs of the public according to their public importance and in the best interest of all as far as practicable."

Affirmed.

64. Said announcement of November 5, 1917, also stated that:

> "In connection with the above, the iron and steel manufacturers have agreed promptly to adjust the maximum prices of all iron and steel products other than those on which prices have been agreed upon to the same general standard as those which have been announced. It is expected that this will be done promptly and consistently in line with the basic, intermediate and finished products, for which definite maximum prices have been established."

Affirmed.

65. Pursuant to the above announcement, the Committee on Steel and Steel Products of the American Iron and Steel Institute received from a subcommittee reports based on information received from representative manufacturers of various other lines of steel and steel products, and from such reports and other data available, the Committee reached a conclusion as to fair and reasonable prices for such products in line with the basic, intermediate and finished products, for which definite maximum prices had been established, and recommended to the industry under dates of November 13, November 20 and December 22, 1917, and January 7, 1918, that such prices be adopted as maximum prices, to take effect immediately, to apply to the requirements of the United States Government, to the requirements of the Allies and for domestic consumption within the United States (Ex. G176).

Affirmed.

66. Under date of December 28, 1917, the following announcement was made by the Committee on Public Information (Official Bulletin, December 29, 1917):

> "The President has approved the recommendation of the War Industries Board that the maximum prices heretofore fixed by the President upon the recommendation of the board upon ore, coke, pig iron, steel, and steel products, subject to revision on Jan. 1, 1918, be continued in effect until March 31, 1918. No new contracts calling for delivery of any of said commodities or articles on or after April 1, 1918, are to specify a price unless coupled

with a clause making the price subject to revision by any authorized United States Government agency, so that all deliveries after that date shall not exceed the maximum price then in force, although ordered or contracted for in the meantime.

"It is expected that all manufacturers and producers will observe the maximum prices now fixed."

Affirmed.

67. Under date of March 26, 1918, the following announcement was made by the Council of National Defense (Official Bulletin, March 27, 1918):

"The President has approved the recommendation of the Price Fixing Committee of the War Industries Board that the maximum prices heretofore fixed by the President upon the recommendation of the board upon ore, coke, steel and steel products, subject to revision on April 1, 1918, be continued in effect until July 1, 1918; from April 1 to July 1, however, the maximum price of basic pig iron be reduced from $33 to 32 per gross ton, and that the maximum price of scrap steel be reduced from $30 to $29 per gross ton. No new contracts calling for delivery of any of said commodities or articles on or after July 1, 1918, are to specify a price unless coupled with a clause making the price subject to revision by any authorized United States Government agency, so that all deliveries after that date shall not exceed the maximum price then in force, although ordered or contracted for in the meantime.

"It is expected that all manufacturers and producers will observe the maximum prices now fixed."

Affirmed.

68. The aforesaid maximum prices agreed upon by the War Industries Board and the aforesaid iron and steel manufacturers were fixed at amounts intended to encourage maximum production by insuring reasonable profits to every available steel mill (Ex. G176).

Affirmed as to the intent, but denied as to the insurance of profits.

69. Said maximum prices were such as to enable the larger and more efficient steel manufacturers an opportunity to make very liberal profits (R., p. 882; Ex. B11).

Denied. The evidence is not sufficient to support this request.

70. The foregoing maximum prices remained substantially unchanged throughout the period of the war.

Affirmed.

71. At the time of the negotiations relating to the ships in controversy it was contemplated that the Fleet Corporation would render Bethlehem every possible assistance in securing with the utmost practical expedition and at a minimum cost all materials required for their construction (R., p. 775).

Affirmed.

72. With respect to the ships in controversy which were similar, or substantially similar, to ships

previously constructed or then under construction at Bethlehem's respective shipyards, Bethlehem was in a position to place its material orders without substantial delay (Exs. G-104; Doc. Ev. p. 203).

Denied. The evidence as to all materials is not sufficient to support this request.

73. Orders for the plates, shapes and bars required for the ships covered by the preliminary agreements of January 5, 1918, and the formal contracts dated December 31, 1917, were placed by Bethlehem prior to February 7, 1918 (Ex. G-161).

Affirmed. This is substantially correct.

74. At the time of the negotiations relating to the contracts in controversy, Bethlehem and its affiliated companies were themselves large manufacturers of shipbuilding materials and were in a position to supply a very substantial part, if not all of the plates, shapes and bars required for said ships, as well as their principal auxiliary equipment.

The evidence upon these facts is not sufficient to justify an unqualified affirmance of this request.

75. Orders were placed by Bethlehem with the Bethlehem Steel Company, at the aforesaid maximum prices established by the War Industries Board, for over 43,000 tons of plates, shapes, and bars out of the total of approximately 60,000 tons required for the East Coast construction of the ships covered by the contracts in controversy dated December 31, 1917 (Ex. G-161).

Affirmed.

76. During the period of construction of the tank and cargo ships completed at Bethlehem's respec-

tive shipyards during 1917, shipbuilding labor cost had very substantially increased as compared with pre-war labor cost at said shipyards.

Affirmed.

77. The principal causes for the increase in labor cost during said period were as follows: (a) the employment of large numbers of workmen unskilled in shipbuilding; (b) the lack of any uniform wage schedule on either the East or West Coast, such lack of uniformity resulting in the loss of experienced workmen to other shipbuilding companies; (c) labor shortage; (d) strikes resulting from controversies as to wage rates and labor conditions, as well as the question of unionization; (e) lack of any effective means of controlling labor; and (f) lack of orderly receipt of materials due to competition among shipbuilders and chaotic transportation conditions (R., pp. 767-772; Ex. G-59, Doc. Ev., p. 32).

Affirmed.

78. From the time of the Government's requisition orders of August 3, 1917, it lent every possible assistance to Bethlehem and other shipbuilders to expedite ship construction.

Affirmed.

79. On November 4, 1917, acting through its agency, the Shipbuilding Labor Adjustment Board, the Government promulgated certain rules as to conditions of employment and established a schedule of minimum wages, retroactive to September 22, 1917, for all shipyards in the San Francisco Bay District, which wage rates were put into effect at the Union shipyard on or about November 24, 1917,

and extended to certain additional labor crafts on December 10, 1917.

Affirmed.

80. On December 10, 1917, in order to provide a stimulus to increase the output of ships in the shipyards of the Pacific Coast, and in order to encourage men who lived at great distances to leave their homes and enter on service in the shipyards, the Fleet Corporation announced that it would pay to all employees of shipyards on the Pacific Coast, with certain exceptions, an additional war service payment of 10%, effective on and after December 15, 1917, and that on February 1, 1918, a further stimulus to attract men to the shipbuilding industry would be provided by converting the foregoing war service payment to a permanent increase of 10% (Stip. of Facts, pp. 4, 5).

Affirmed.

81. During the autumn of 1917 the Fleet Corporation authorized Bethlehem to put into effect at its respective East Coast shipyards the wage rates prevailing at the nearest Navy Yards, and prior to January 3, 1918, said Navy Yard wage rates had actually been put into effect at Bethlehem's respective East Coast shipyards, insofar as practicable.

Affirmed.

82. At the time of the negotiations relating to the contracts in controversy, it was contemplated that government control of conditions of employment and wage rates would result in removing the principal causes of strikes and the loss of experienced workmen to other shipyards.

This was the hope—but without guaranty of realization.

83. At the time of the negotiations relating to the contracts in controversy, it was contemplated that stabilization of wage rates and conditions of employment for the entire shipbuilding industry by the Shipbuilding Labor Adjustment Board would result in the removal of the principal cause for Bethlehem's previous loss of experienced workmen to other shipyards. (See R., pp. 767-8 and 773-4.)

If hope is substituted for contemplated the request is affirmed.

84. Prior to the negotiations relating to the contracts in controversy, the Government had taken measures to exempt skilled and semi-skilled shipyard labor from the draft, the benefits of such exemption being illustrated by the fact that on February 1, 1918, 65 to 70% of Bethlehem's total labor force consisted of men within the draft ages, (R., p. 774), and the Fleet Corporation had also established a service department for the purpose of obtaining an adequate supply of labor most fitted by training and experience for ship construction, as well as for the purpose of improving the labor morale (R., pp. 774-5).

Affirmed.

85. At the time of the negotiations relating to the contracts in controversy it was contemplated that Bethlehem would be able to obtain workmen as fast as they could be absorbed at its respective shipyards in connection with the shipbuilding program

undertaken by it for the Fleet Corporation (Ex. G-125, Doc. Ev., p. 325; Roberts, Rec. p. 642).

Evidence fails to support the request as to time, and it is therefore denied.

86. Exemption of shipyard labor from the draft also afforded Bethlehem an effective means of controlling labor and inducing it to work.

Denied as stated. There was no assurance of the effectiveness of this exemption.

87. During 1917 Bethlehem changed many of its old established shipbuilding methods under which a workman had been trained to do a great many different things, and substituted a system of specialization, which was being very rapidly developed during the latter part of that year, under which it was possible to train workmen very rapidly for the particular or special work assigned to them.

Affirmed.

88. The various methods adopted by Bethlehem with respect to training workmen and increasing their efficiency were being very rapidly developed during the latter part of 1917 (Roberts, Rec., p. 643).

Affirmed.

89. At the time of the negotiations relating to the contracts in controversy dated December 31, 1917, it was also contemplated that the efficiency of labor would be very greatly increased by the fact that the tank and cargo ships to be built for the Fleet Corporation were of but few types and were also duplicates of or substantially similar to Beth-

lehem's standard types of ships. It was contemplated that this would enable Bethlehem to employ its existing labor force on work with which it was already familiar from actual experience, and would likewise permit it to employ all workmen over and over again on exactly the same kind of work in connection with the same type of ship (Ex. G-104, Doc. Ev., p. 203; Robert's Rec., pp. 645-6).

Affirmed as substantially in accord with the evidence.

90. At the Fore River shipyard, which may be considered as fairly representative of all Bethlehem's shipyards in the following respects, the normal pre-war labor force of between 4,000 and 5,000 men had been gradually increased to approximately 11,000 on December 6, 1917, which was but approximately 3,000 below the peak of 14,000 reached under capacity production on January 1, 1919 (R., pp. 665, 768-9).

Denied. The testimony as to numbers of men is so in conflict that Fore River cannot be taken as fairly representative of Bethlehem yards.

91. At the time of the negotiations relating to the contracts in controversy, it was also contemplated that the Fleet Corporation would endeavor to insure the orderly receipt by Bethlehem of an adequate supply of all materials required for the shipbuilding program undertaken by it for the Fleet Corporation (R., pp. 775-6).

Affirmed. This conclusion may be assumed, whether directly supported by evidence or not.

92. In view of the circumstances and conditions known to Bethlehem at the time of its December, 1917, negotiations with the Fleet Corporation, it was reasonable to suppose that under the "half-savings" form of contract Bethlehem, by the exercise of its best efforts, would be able to increase the average efficiency of labor at its respective shipyards during the period required for the construction of the ships in controversy, as compared with average efficiency at said shipyards under conditions prevailing during 1917, provided such efforts were not frustrated by reason of strikes or similar contingencies beyond its control (R., pp. 690, 692-3, 776-8).

Denied as stated. The testimony is that no one could tell what the future might develop so there was no basis for a "reasonable supposition".

93. Prior to the negotiations relating to the contracts in controversy and as a result of his close study of the labor situation during the year 1917 (Roberts' Rep., pp. 632, 642), it was contemplated by Powell that under the "half-savings" form of contract Bethlehem, by the exercise of its best efforts, would be able to increase the average efficiency of labor at its respective shipyards during the period required for the construction of the ships in controversy, as compared with average efficiency then existing; provided such efforts were not frustrated by reason of strikes or similar contingencies beyond its control (R., pp. 690, 692-3, 776-8, 786-7).

Denied as stated. Powell expressed hopes without assurances.

94. At the time of the negotiations relating to the respective tank and cargo ships in controversy Bethlehem was in a position to readily determine the approximate cost of the materials required for the construction of said ships at then existing prices, by reason of its available cost data relating to similar or substantially similar ships previously constructed and then under construction at its respective shipyards.

Denied. The proposals were not confined to all materials at then existing prices.

95. By means of a comparison of the costs of the principal items of material in "Job 12" required for the construction of similar or substantially similar tank and cargo ships previously constructed or then under construction at Bethlehem's respective shipyards, with the prices of similar items existing at the time of its negotiations with the Fleet Corporation relating to the tank and cargo ships in controversy, Bethlehem, at the time of said negotiations, was in a position to determine the approximate cost of "Job 12" materials required for said respective ships in controversy upon the basis of prices then existing.

Denied. See 94.

96. By comparison of the cost of the principal items of material, exclusive of "Job 12" material, required for the construction of similar or substantially similar tank and cargo ships previously constructed or then under construction at Bethlehem's respective shipyards, with the prices of similar items existing at the time of the negotiations with the Fleet Corporation relating to the tank and cargo

ships in controversy, Bethlehem, at the time of said negotiations, was in a position to readily determine the approximate cost of such material required for said respective ships in controversy upon the basis of prices then existing.

Denied. See 94.

97. With respect to Hulls Nos. 150, 151, 153 and 170 included in Contract No. 191, all of the materials required for their construction had been purchased and a large part thereof actually delivered prior to the negotiations relating to said contract (Exs. G-41, -96, -112; R., p. 210).

Affirmed with the substitution of "substantially all" for "all".

98. The total cost of materials required for the construction of Hulls Nos. 150, 151, 153 and 170 was $2,756,767.56, or $689,191.89 per ship (Ex. B-32).

Affirmed.

99. With respect to Hull No. 176 covered by Contract No. 196, all of the materials required for its construction had been purchased prior to the negotiations relating to said contract (Ex. G-112, Doc. Ev., p. 235).

Affirmed.

100. The total cost of materials required for the construction of Hull No. 176 was $429,932.31 (Ex. B-32).

Affirmed.

101. At the time of the negotiations relating to the respective tank and cargo ships in controversy it was contemplated by Bethlehem that armed guard

equipment and war zone requirements for said ships would cost approximately $7.00 per deadweight ton.

Affirmed.

102. At the time of the negotiations relating to the contracts in controversy, Bethlehem was in a position to determine from its available records the approximate average hourly earning rates at its respective shipyards under the respective wage schedules referred to in Article 19 of the contracts in controversy (R., pp. 392-3, 406-10, 769, 526).

Affirmed.

103. At the time of the negotiations relating to the contracts in controversy, Bethlehem, by reason of its available cost data relating to similar or substantially similar ships previously constructed and then under construction at its respective shipyards, was in a position to determine the approximate number of hours required for the construction of the respective ships in controversy upon the basis of the average labor efficiency applicable to said similar or substantially similar ships.

Affirmed.

104. At the time of the negotiations relating to the contracts in controversy, Bethlehem, by reason of its available cost data relating to similar or substantially similar ships previously constructed and then under construction at its respective shipyards, was in a position to determine the approximate cost of direct labor required for the construction of the respective ships in controversy, upon the basis of the respective wage schedules referred to in said contracts and upon the basis of the average labor

efficiency applicable to said similar or substantially similar ships.

Affirmed. The conclusion however is not material to the issues as there was no assurance that these bases would remain constant.

105. At the time of the negotiations relating to the contracts in controversy, Bethlehem, by reason of its available cost data relating to similar or substantially similar ships previously constructed and then under construction at its respective shipyards, was in a position to determine the approximate cost of direct labor required for the construction of the respective ships in controversy, upon the basis of the respective wage schedules referred to in said contracts and upon the basis of labor efficiency existing at its respective shipyards at the time of said negotiations.

Affirmed, but see 104.

106. At the time of the negotiations relating to the respective tank and cargo ships in controversy, Powell and Brown, by reason of their long training and experience in shipbuilding and their study and intimate knowledge of the labor situation, were in a position to determine approximately what Bethlehem might reasonably expect to accomplish with respect to increasing efficiency of labor at its respective shipyards during the period required for the construction of said ships as compared with average efficiency existing at said shipyards at the time of said negotiations and as compared with average efficiency in connection with the similar or substantially similar ships previously constructed at said shipyards (Roberts' Rec., p. 550).

Denied, because guessing against unascertainable future conditions is not the equivalent of "reasonable expectation".

107. At the time of the negotiations relating to the respective tank and cargo ships in controversy, Powell and Brown were in a position to determine the probable approximate efficiency of labor at Bethlehem's respective shipyards during the period required for the construction of the said ships, upon the assumption that such efficiency would not be substantially affected by strikes, labor shortages, delays in delivery of materials, or other similar contingencies beyond its control (Roberts' Rec., p. 550).

Denied as stated. The assumptions are too many without sufficient support in fact to make such a finding material.

108. Prior to the negotiations relating to Contract No. 191 a substantial part of the direct labor required for the construction of Hulls Nos. 150, 151, 153 and 170 had already been performed (Exs. G-41, -96, -112).

Denied, because not sufficiently supported by evidence.

109. Under the cost accounting system prevailing at Bethlehem's shipyards prior to the negotiations relating to the contracts in controversy, plant overhead or operating expense consisted of material and labor not chargeable directly to any particular job or contract and covered such items as salaries of supervisory force and clerks, repairs, maintenance of buildings and equipment, insurance, property

taxes, light, heat and power, and other similar items. (Ex. G-168).

Affirmed.

110. At the time of the negotiations relating to the contracts in controversy Bethlehem's cost records showed that plant overhead or operating expense averaged approximately thirty-five per cent of the cost of direct labor in connection with the ships previously completed at its respective shipyards (Ex. G-6).

Denied as stated because this percentage does not reflect A. S. & G. and depreciation.

111. At the time of the negotiations relating to the contracts in controversy, Bethlehem, by reason of its available cost data relating to ships previously constructed and then under construction at its respective shipyards, was in a position to determine the probable approximate cost of plant overhead or operating expense in connection with the respective tank and cargo ships in controversy.

Denied. The variables were too many.

112. At the time of the negotiations relating to the respective tank and cargo ships in controversy, Bethlehem was in a position to determine the probable approximate percentage relationship which plant overhead or operating expense would bear to the cost of direct labor in connection with said ships.

Denied. See 111.

113. Under the cost accounting system prevailing at Bethlehem's shipyards prior to the negotiations

relating to the contracts in controversy, administrative and general expense covered the expense of its executive office and consisted principally of salaries together with office expenses, such as light, heat, supplies and similar items (Ex. G-168).

Affirmed.

114. At the time of the negotiations relating to the contracts in controversy, Bethlehem, by reason of its available cost data relating to ships previously constructed and then under construction at its respective shipyards, was in a position to determine the probable approximate cost of administrative and general expense in connection with the construction of the respective tank and cargo ships in controversy.

Denied. See 111.

115. At the time of the negotiations relating to the contracts in controversy, Bethlehem's cost records showed that the total administrative, selling and general expense, including depreciation, with respect to the ships completed at its respective shipyards during 1917 average approximately five per cent of the total cost of direct labor, materials, and operating expense in connection therewith (Exs. G-60, G-6).

Affirmed.

116. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was contemplated that the percentage relationship of administrative and general expense to the total cost of direct labor, materials, and plant overhead or operating expense, in connection with said ships, would be substantially reduced as compared with the

percentage relationship of such items in connection with the similar, or substantially similar, ships previously constructed at Bethlehem's respective shipyards.

Denied. See 111.

117. At the time of the negotiations relating to the tank and cargo ships in controversy, Bethlehem, by reason of its available cost data, was in position to determine the approximate depreciation properly chargeable to the cost of construction of said ships.

Denied. See 111.

118. At the time of the negotiations relating to the contracts in controversy, Bethlehem's cost records showed that its total overhead expense, viz.: plant overhead or operating expense, administrative, selling and general expense and depreciation, had averaged approximately 65% of the cost of direct labor in connection with the ships previously constructed at its Fore River shipyard (Exs. G-155, G-60).

Affirmed.

119. At the time of the negotiations relating to the respective tank and cargo ships in controversy, the Fleet Corporation was uninformed as to the total cost of Bethlehem of the materials required for the construction of the similar, or substantially similar, ships previously constructed at its respective shipyards.

Affirmed.

120. At the time of the negotiations relating to the respective tank and cargo ships in controversy,

the Fleet Corporation was uninformed as to the unit or total cost of the respective items of materials required for the construction of the similar, or substantially similar, ships previously constructed at Bethlehem's respective shipyards.

Affirmed.

121. At the time of the negotiations relating to the contracts in controversy, in the absence of information as to material costs in connection with the similar, or substantially similar, ships previously constructed at Bethlehem's respective shipyards, the determination by the Fleet Corporation of the approximate cost to Bethlehem of the material required for the respective ships in controversy would have necessitated a study of plans and specifications of the respective ships, the preparation of bills of material, and the determination of weights and costs of the multitude of material items going to make up the total (R., pp. 621, 623-4, 263-5).

Denied. Cost of ships already completed could have been demanded of Bethlehem and the experience of Bowles and Radford was "the basis" for an educated guess as to future variables.

122. At the time of the negotiations relating to the tank and cargo ships in controversy, it was impracticable for the Fleet Corporation to undertake the long and involved task of building up from detailed plans and specifications estimates of the approximate cost to Bethlehem of the material required for the respective ships (R., 876-7, 986-994, 685-6, 980-3; Bill, par. 22).

Affirmed as stated, but such undertaking was not necessary.

123. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood by Bethlehem that the Fleet Corporation was not undertaking to build up from detailed plans and specifications estimates of the approximate cost to Bethlehem of the material required for said ships.

Affirmed upon fair inferences, though unsupported by evidence.

124. At the time of the negotiations relating to the respective tank and cargo ships in controversy the Fleet Corporation was uninformed as to the probable approximate cost of the materials required for the respective ships.

Affirmed.

125. At the time of the negotiations relating to the respective tank and cargo ships in controversy, the Fleet Corporation was uninformed as to the total cost of direct labor required for the construction of the similar, or substantially similar, ships previously constructed at Bethlehem's respective shipyards.

Affirmed as stated. It is fair to assume that the equivalent cost was available to the Fleet Corporation from other sources.

126. At the time of the negotiations relating to the respective tank and cargo ships in controversy, the Fleet Corporation was uninformed as to the average hourly earning of direct labor in connection with the similar, or substantially similar, ships

previously constructed at Bethlehem's respective shipyards.

Affirmed. See 125.

127. At the time of the negotiations relating to the respective tank and cargo ships in controversy, the Fleet Corporation was uninformed as to the hours of direct labor required for the construction of the similar, or substantially similar, ships previously constructed at Bethlehem's respective shipyards.

Affirmed. See 125.

128. At the time of the negotiations relating to the respective contracts in controversy, the Fleet Corporation was not in a position to determine the approximate average hourly earning rates at Bethlehem's respective shipyards under the wage schedules referred to in said contracts.

Affirmed. See 125.

129. At the time of the negotiations relating to the contracts in controversy, the Fleet Corporation was not in a position to determine what Bethlehem might reasonably expect to accomplish under said contracts in the way of increasing efficiency of labor at its respective shipyards during the contemplated period of construction.

Affirmed. Bethlehem's position was not substantially better.

130. At the time of the negotiations relating to the respective tank and cargo ships in controversy, the Fleet Corporation was not in a position to determine the probable approximate cost to Bethlehem of

the direct labor required for their respective construction upon the basis of the wage schedules referred to in the respective contracts.

Affirmed. See 129.

131. At the time of the negotiations relating to the respective tank and cargo ships in controversy, the Fleet Corporation was uninformed as to the nature of the particular items included in plant overhead or operating expense, or in administrative and general expense, under Bethlehem's system of cost accounting, or as to the cost of such items in connection with ships previously constructed at Bethlehem's respective shipyards.

Affirmed.

132. At the time of the negotiations relating to the respective tank and cargo ships in controversy, the Fleet Corporation was uninformed as to the past depreciation charges against ship-construction at Bethlehem's respective shipyards.

Affirmed.

133. At the time of the negotiations relating to the respective tank and cargo ships in controversy, the Fleet Corporation was not in a position to determine the probable approximate cost to Bethlehem of plant overhead or operating expense in connection with said ships upon the basis of the wage schedules referred to in the respective contracts.

Affirmed. See 129.

134. At the time of the negotiations relating to the respective tank and cargo ships in controversy, the Fleet Corporation was not in a position to determine

the probable approximate administrative and general expense in connection with the construction of said ships.

Affirmed. See 129.

135. At the time of the negotiations relating to the respective tank and cargo ships in controversy, the Fleet Corporation was not in a position to determine the probable approximate depreciation chargeable to the construction of said ships.

Affirmed. See 129.

136. At the time of the negotiations relating to Hulls Nos. 150, 151, 153, 170 and 176, subsequently included in Contracts Nos. 191 and 196, respectively, the Fleet Corporation did not know the actual cost to Bethlehem of the materials theretofore purchased for said ships.

Affirmed. If deemed important, the Fleet Corporation could have obtained this information before signing these contracts.

137. At the time of the negotiations relating to Hulls Nos. 150, 151, 153 and 170, the Fleet Corporation did not know the actual cost to Bethlehem of the labor which had already been performed in connection with the construction of said ships.

Affirmed. See 136.

138. In its negotiations with the Fleet Corporation relating to the respective tank and cargo ships in controversy, Bethlehem presented no breakdown of cost estimates other than that which is contained in its proposal dated December 19, 1917.

Affirmed.

139. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was impracticable for the Fleet Corporation to make any analysis of the estimates of cost submitted by Bethlehem (R., pp. 986-991, 876-7, 685-6, 980-3).

Denied: The Fleet Corporation could have analyzed these estimates and compared them with other cost estimates had the Fleet Corporation deemed such a course to be an aid to educated guessing.

140. At the time of the negotiations relating to the respective tank and cargo ships in controversy, the Fleet Corporation was not in a position to determine the probable approximate cost to Bethlehem of building said ships upon the basis of then existing material costs and upon the basis of the respective wage schedules designated in the contracts in controversy (R., pp. 482-3).

Affirmed. Such cost was a guess for either Bethlehem or the Fleet Corporation.

141. Following a meeting held in Washington on June 15, 1917, attended by Powell and other shipbuilders, the General Manager of the Fleet Corporation sent a letter dated June 15, 1917, (a copy of which appears as Exhibit G58), to the Fore River Shipbuilding Corporation and to each of the other four shipbuilding companies which were then subsidiaries of the Bethlehem Steel Corporation, requesting formal proposals from each of said companies with respect to the ship construction which they were able to undertake for the Fleet Corporation, stating, *inter alia* (Doc. Ev., p. 28):

"This corporation will permit you, if desired, to build your own types of vessel, to which you are accustomed, provided the plans and specifications are approved by our Naval Architect. It desires to receive formal proposals based on price per ton dead weight carrying capacity, with dates of delivery. So far as possible the Corporation will give preference to the lowest prices received, other things being equal, but due consideration will be given promised times of delivery, the type of vessel offered and other characteristics of the proposal from the standard of desirability as viewed by the Corporation. Your proposals should be accompanied by a schedule of complete information, giving the assumptions on which your proposal is based, as described hereinafter. If your proposal is accepted, these schedules will be the basis of the contract and you will be protected as regards any increases in material, labor or accessories. These schedules should be properly certified as being the correct basis of your estimate and should include—first, a schedule, in as much detail as practicable, showing your present wage schedule; second, there should be a schedule of your base material prices. In the case of steel no firm price has yet been agreed upon with the steel companies. You may use in your estimate, the following base prices—plates, 4¼c, shapes 4c, bars 3¾c, f. o. b. Pittsburgh. If the actual price is higher than this, the corporation will pay the difference. If it is lower than this, a deduction will be made in your contract price. Before making any commitments, the written approval of this corpora-

tion should be obtained. Your schedule unit prices of all materials should be as complete as possible. There should also be submitted a schedule giving your arrangements and prices for the purchase of boilers, engines, shafting, winches, windlasses, deck and life boat equipment, navigating instruments and all important auxiliaries that go with the completed ship.

"If the Corporation is able to purchase these accessories in large quantities by combining the order for all of its steel steamships, it will expect to absorb these savings. If you cannot cover at the prices named in your schedule, due to an advance in prices, after you have made your estimate, the corporation will protect you on your estimated price. If you have any special suggestions or requests to make requiring additional protection as regards the item of labor than is given hereinabove, you may state same in your proposition."

Affirmed.

142. Said letter of June 15, 1917 (Ex. G-58), was answered by the Bethlehem Steel Corporation upon behalf of each of its subsidiary shipbuilding companies by letter dated June 26, 1917, a copy of which appears as Ex. G59 (Doc. Ev., p. 29).

Affirmed.

143. Throughout the negotiations relating to the tank and cargo ships included in the contracts in controversy dated December 31, 1917, the Fleet Corporation endeavored to persuade Powell to under-

take the construction of said ships under lump-sum contracts (R., pp. 470-1, 193-4, 214).

Affirmed.

144. Powell refused to accept lump-sum contracts for the tank and cargo ships in controversy and insisted that the "half-savings" form of contract which he had originated (R., pp. 190-1) and which had been adopted by the Navy Department in connection with the destroyer contracts of December 6, 1917 (Exs. G157, 158), should likewise be adopted by the Fleet Corporation (R., pp. 470-1).

Affirmed.

145. In suggesting the adoption of the "half-savings" form of contract in connection with the contracts in controversy, Powell stated in his proposals dated December 13 and 19, 1917 (Exs. G-104, 109; Doc. Ev., pp. 202, 227):

> "Because of the unprecedented conditions surrounding the Labor and Material market, it is impracticable to estimate within a reasonable percentage what will be the actual cost of construction, and it is, therefore, impossible to submit fixed prices for any of these vessels, except upon a basis so far above estimated cost that any figure acceptable to this Company would not be acceptable to the Emergency Fleet Corporation. It is proposed, however, that they be constructed on the basis of actual cost plus a fee, with an agreed upon probable cost, this Company to be paid in addition to the fee one-half of any saving that may be made below this cost figure, and with the further provision that

the estimated cost figure will be increased due to any increase in rates of wages that may be approved by the Emergency Fleet Corporation.

* * *

"This Company's letter of December 13th, proposed to construct such vessels as may be ordered by the Emergency Fleet Corporation for actual cost plus a fee, with an agreed upon base cost, this Company to be paid, in addition to the fee, one-half of any saving that may be made below this base cost, and with a further provision that the said base cost will be increased, due to any increase of rate in wages that may be paid by the order of the Emergency Fleet Corporation. This would not apply in the case of the troop ships, as it is impossible to make an approximate estimate of their cost, and it is therefore proposed that, if these vessels must be built at the Sparrow's Point Plant, they shall be constructed on a straight cost and percentage basis."

Affirmed.

146. The necessity of making an allowance in a lump-sum form of contract for the possible occurrence of contingencies which might result in actual cost exceeding lump-sum prices, was the reason for Powell's statement that it was "impossible to submit fixed prices for any of these vessels, except upon a basis so far above estimated cost that any figure acceptable to this Company would not be acceptable to the Emergency Fleet Corporation." (R., pp. 766-7, 473-6).

Affirmed.

147. At the time of the negotiations relating to the tank and cargo ships in controversy, it was understood that any lump-sum prices which would have been acceptable to Bethlehem for the respective ships would be very substantially in excess of the respective base prices plus fixed fees agreed upon with respect thereto (R., pp. 760, 762-7; Roberts' Rec., pp. 648-9).

Affirmed.

148. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that the respective estimates and fixed fees submitted by Bethlehem and agreed upon for said ships were not supposed to be the equivalent of lump-sum prices which would have been acceptable to Bethlehem (R., pp. 765-6).

Affirmed.

149. At the time of the negotiations relating to the contracts in controversy, it was understood that shipbuilders were very reluctant to accept lump-sum prices for the construction of ships and that said contracts were accepted only at prices which required the Fleet Corporation to assume the risk of possible increase in cost which might result from strikes, labor shortage, increase in labor rates, or other similar contingencies beyond its control (R., p. 478).

Affirmed.

150. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that the estimates of cost submitted by Bethlehem with respect thereto were sup-

posed to be determined upon a basis similar to that employed in determining the estimates submitted by it in connection with the destroyer contracts of December 6, 1917, copies of which appear as Exhibits G-157-158 (R., p. 760).

Denied as stated. The evidence does not justify such a finding.

151. Powell and Brown had represented Bethlehem in the negotiations relating to the said destroyer contracts of December 6, 1917.

Affirmed.

152. In explaining the principles, purposes, and objects of the "half-savings" form of contract and its advantages as compared with the lump-sum form of contract, Powell testified before the Committee on Commerce of the United States Senate on February 1, 1918, that if Bethlehem had been obliged to construct the destroyers covered by the contracts of December 6, 1917 (Exs. G-157-158) upon a lump-sum basis, any lump-sum prices acceptable to Bethlehem would have been approximately $2,000,000 per ship, instead of the base price of $1,500,000, plus the fixed fee of $135,000, designated in said contracts, or a total of $1,635,000 per ship (R., pp. 763-5).

Affirmed.

153. At the time of the negotiations relating to the tank and cargo ships in controversy, it was understood that the base price of $1,500,000 per destroyer named in said destroyer contracts of December 6, 1917, was supposed to be based upon the

then existing cost of materials required for their construction (R., pp. 763, 197).

Denied as stated because not supported by evidence.

154. At the time of the negotiations relating to the contracts in controversy, it was understood that any "savings" in which Bethlehem might participate in connection with said destroyer contracts of December 6, 1917, were supposed to result solely from its efforts and ability to increase efficiency of labor and management, as compared with average efficiency under conditions then existing at its respective shipyards where said destroyers were to be constructed (R., pp. 776-9).

Denied. The destroyer contracts were not a part of any understanding affecting the contracts in controversy.

155. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that the estimates of cost submitted by Bethlehem and designated as base prices in the respective contracts in controversy (other than those relating to ships for which materials had already been purchased) were supposed to be based upon material prices then existing.

Denied. Existing prices were assumed to be taken into consideration in estimating the future contingencies.

156. In his proposal of December 13, 1917 (Ex. G-104) Powell stated:

"This Company has contracts with the Midvale Steel & Ordnance Company, dated March

29th, 1917, and the Central Iron & Steel Company, dated March 19th, 1917, for a total of 6,850 tons of steel plates and marine boiler steel, less than 500 tons of which is marine boiler steel, at Six Cents (6¢) per pound for the steel plates and Fifteen Cents (15¢) per pound for the boiler steel, which are firm contracts, and which steel it is obligated to take for use in Merchant vessels. Since the entry of the Emergency Fleet Corporation into the field of ship purchases and since its commandeering order forbidding the sale of ships to any other parties, this Company's proposal is based on the understanding that it will be allowed to use this amount of steel in its various vessels at the prices covered by its contracts, namely Six Cents (6c) for Steel Plates and Fifteen Cents (15c) per pound for Boiler Steel."

Affirmed.

157. In the estimates submitted in his proposal dated December 19, 1917 (Ex. G-109), Powell added $2.50 per deadweight ton on account of the aforesaid contract steel referred to in his proposal of December 13, 1917, said allowance being referred to as follows:

"Extra cost of steel, as per page 6, letter of December 13th, averaged over all extra tonnage—$2.50 per d. w. ton."

Affirmed.

158. At the time of the negotiations relating to the contracts in controversy, it was understood that the foregoing allowance of $2.50 per deadweight ton

on account of "extra cost of steel" was supposed to represent the difference between the contract and War Industries Board prices for said steel (R., pp. 100-1; Roberts' Rec., pp. 612-13).

Affirmed.

159. At the time of the negotiations relating to the respective tank and cargo ships in controversy (other than those for which materials had already been purchased), it was understood that Bethlehem was not intended to make any substantial "savings" against the estimates of material costs which it was supposed to have made for said respective ships (R., pp. 792-3).

Denied. The evidence does not disclose such understanding.

160. At the time of the negotiations relating to Hulls Nos. 150, 151, 153, 179 and 176, subsequently included in Contracts Nos. 191 and 196, it was understood that Bethlehem was not intended to make any substantial "savings" with respect to materials in connection with its estimates for said ships.

Denied. The evidence does not disclose such understanding.

161. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that the estimates of cost submitted by Bethlehem "and the estimated actual cost to the Contractor", designated as base prices in the respective contracts, were supposed to be based upon the respective wage schedules referred to in said contracts.

Denied. The evidence does not disclose such understanding.

162. At the time of the negotiations relating to Hulls Nos. 150, 151, 153 and 170 included in Contract No. 191, Bethlehem was in a position to determine the probable approximate cost of said ships upon the basis of efficiency then existing and upon the basis of actual prices of material already contracted for and upon the basis of the wage schedule designated in said contract.

Affirmed, but as so affirmed it is not material as such cost would make no allowance for future contingencies.

163. At the time of the negotiations relating to Hull No. 176 included in Contract No. 196, Bethlehem was in a position to determine the probable approximate cost of said ship upon the basis of efficiency then existing and upon the basis of actual prices of material already contracted for and upon the basis of the wage schedule designated in said contract.

Affirmed. See 162.

164. At the time of the negotiations relating to the remaining tank and cargo ships in controversy, Bethlehem was in a position to determine the probable approximate cost of said respective ships upon the basis of efficiency and material prices then existing and upon the basis of the wage schedules designated in the respective contracts.

Affirmed. See 162.

165. At the time of the negotiations relating to the troop ships included in Contract No. 182, Beth-

lehem was not in a position to determine the probable approximate cost of said troop ships for the reason that they represented a new type of construction with respect to which there was no cost data available such as existed with respect to the tank and cargo ships in controversy (Ex. G-109, Doc. Ev., p. 227).

Affirmed. Neither Bethlehem nor the Fleet Corporation were enabled to anticipate the future beyond the point of an educated guess.

166. At the time of the negotiations relating to Hulls Nos. 150, 151, 153 and 170 included in Contract No. 191, it was understood that the estimates of cost submitted by Bethlehem and designated as base prices in said contract were supposed to represent estimates of probable approximate cost to Bethlehem of building said ships upon the basis of the wage schedule designated in said contract and upon the basis of actual prices of material already contracted for.

Denied. The evidence discloses no such understanding.

167. At the time of the negotiations relating to Hull No. 176 included in Contract No. 196, it was understood that the estimate of cost submitted by Bethlehem and designated as the base price in said contract was supposed to represent an estimate of the probable approximate cost to Bethlehem of building said ship upon the basis of wage schedule designated in said contract and upon the basis of the actual prices of material already contracted for.

Denied. 166.

168. At the time of the negotiations relating to the remaining tank and cargo ships in controversy, it was understood that the estimates of cost submitted by Bethlehem and designated as base prices in the respective contracts were supposed to represent estimates of the probable approximate cost to Bethlehem of building said respective ships upon the basis of the wage schedules designated in the respective contracts and upon the basis of material prices then existing.

Denied. 166.

169. At the time of the negotiations relating to the tank and cargo ships in controversy, it was understood that Bethlehem had made such study of the cost data available to it as would enable it to determine the probable approximate cost of building said respective ships upon the basis of the wage schedules designated in the respective contracts and upon the basis of the material prices then existing.

Denied. See G 109.

170. At the time of the negotiations relating to the tank and cargo in controversy, it was understood that any substantial "savings" effected by Bethlehem with respect to their respective costs of construction, were supposed to result solely from an increase in the average efficiency of labor and management then existing (R., pp. 776-8, 692-3, 689-690, 778-9).

Denied as stated, unless increase in efficiency of service of material is intended to be included in efficiency of management.

171. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that Bethlehem's ability to build such ships for less than the estimates of actual cost designated as base prices in the respective contracts (plus increases representing increases in wage rates and changes and extras) was supposed to depend upon its ability to effect economies by increasing the efficiency of management and labor as compared with average efficiency then existing.

Denied as stated, the word "understood" assumes too much. See also 170.

172. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that the consideration for allowing Bethlehem to participate in "savings" was supposed to be the fact that such "savings", if any, would result from and be substantially commensurate with economies effected by increasing efficiency of management and labor, as compared with average efficiency then existing.

Denied. It states too much. See 170 and 171.

173. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that under the "half-savings" form of contract Bethlehem was supposed to participate only in such "savings", if any, as were earned and made possible by its efforts and ability to reduce cost by increasing efficiency.

Denied. Bethlehem was to participate in savings however earned, but expected to produce savings by increased efficiency.

174. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that participation in "savings" was supposed to represent a bonus or additional compensation to be earned by Bethlehem as consideration for its special efforts and ability to reduce cost by increasing efficiency of management and labor as compared with efficiency then existing.

Affirmed, but see als 170, 171 and 173.

175. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that the base prices named in the respective contracts were not supposed to result in the payment of any bonus or compensation to Bethlehem, in addition to the respective fixed fees, for special efforts to increase efficiency unless such efforts proved successful.

Denied as stated. 174 is a more accurate statement of the purpose of the contract.

176. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that insofar as Bethlehem's ability to earn any compensation under the respective contracts in addition to its fixed fees was concerned, it was supposed to assume the risk of any possible increase in then existing material prices before it was able to contract for its requirements (R., pp. 692-3, 792-3).

Affirmed, if risk means merely the risk of increase in cost over base cost.

177. At the time of the negotiations relating to the respective tank and cargo ships in controversy,

it was understood that insofar as Bethlehem's ability to earn any compensation under the respective contracts in addition to its fixed fees was concerned, it was supposed to assume the risk of any increases in actual cost which might possibly result from strikes, labor shortage, delays in transportation, increase in freight rates, and other similar contingencies beyond its control (R., pp. 692-3, 776-8, 787).

Affirmed: See 176. Such increases in cost however were not to be paid by Bethlehem.

178. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that the base prices designated in the respective contracts were not intended to include any allowance representing increase in cost which might possibly result from the occurrence of the aforesaid contingencies over which Bethlehem had no control.

Affirmed.

179. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that Bethlehem had made such study of cost data available to it as would enable it to determine base prices which would afford it a reasonable opportunity of making a reasonable "saving", provided it was successful in its efforts to increase the efficiency of management and labor as compared with average efficiency then existing.

Affirmed.

180. The estimates designated as base prices in the respective contracts in controversy were represented by Powell and Brown as being the lowest

prices which, according to their best and mature judgment, would afford Bethlehem a reasonable opportunity to effect "savings" as a result of its efforts and ability to increase efficiency of management and labor as compared with average efficiency then existing.

Affirmed.

181. At the time of the negotiations relating to the respective tank and cargo ships in controversy, it was understood that the estimates submitted by Bethlehem and the base prices named in the respective contracts were not supposed to include any allowance for Federal taxes (R., pp. 689, Roberts' Rec., p. 547).

Affirmed. Bethlehem hoped to realize enough from its share of savings to pay Federal taxes.

182. The estimates of cost submitted in Powell's proposal dated December 19, 1917 (Ex. G-109) represented figures furnished to him by Brown, plus an additional allowance of approximately $10.00 per deadweight ton added to such figures by Powell (R., 327-8, 451-2, 677-8).

Affirmed.

183. Said allowance of approximately $10.00 per deadweight ton added by Powell to the figures furnished by Brown, included the item of $2.50 per deadweight ton for "extra cost of steel" referred to in Powell's proposals dated December 13 and 19, 1917 (Exs. G-104, 109) and the balance, or approximately $7.50 per deadweight ton, according to Pow-

ell's own admission, represented an allowance "for trading purposes" (R., pp. 732-4).

Affirmed.

184. Powell himself did no estimating in connection with any of the estimates submitted for the ships covered by the contracts in controversy, other than to determine the amount to be added "for trading purposes" and for "extra cost of steel" to the figures furnished to him by Brown (R., pp. 70-1, 108, 115-6, 257, 327-8, 332-3, 451-3, 677-8, 701-2, 732-4).

Affirmed.

185. The breakdown of costs set forth in Bethlehem's proposal dated December 19, 1917 (Ex. G-109) was actually based upon no study or analysis of cost whatsoever. Upon the contrary, said breakdown represented an arbitrary division of the total cost estimates presented in said proposal and was submitted for the purpose of lending a semblance of support to such estimates (R., pp. 109, 110).

Affirmed.

186. At the time of Bethlehem's proposal dated December 19, 1917 (Ex. G-109), Brown advised Powell that the allowance for administrative, selling, and general expense made in the breakdown of costs set forth in said proposal, was excessive (R., pp. 105, 106).

Affirmed.

187. Prior to the conference of January 3, 1918, Brown furnished Powell with certain figures representing alleged estimates of cost of the tank and

cargo ships which Bethlehem proposed to build for the Fleet Corporation, which estimates corresponded with the prices indicated by the chart offered in evidence as Exhibit G-134½, for tank and cargo ships of similar tonnages (R., pp. 115-6, 332-3, 451-2).

Affirmed.

188. The estimates of cost which Brown furnished to Powell for use in connection with the conference of January 3, 1918, were approximately $10.00 per deadweight ton less than the estimates named in the proposal of December 19, 1918 (R., pp. 732-3, 327).

Affirmed.

189. The chart which appears as Exhibit G-134½ was the sole basis for all estimates furnished to Powell by Brown with respect to the ships in controversy (R., pp. 452-3; Roberts' Rec., pp. 196-7).

Denied. The knowledge of Powell and Brown based on experience confirmed the chart.

190. Powell had determined in advance of the conference of January 3, 1918, that he would not agree to base prices for the tank and cargo ships covered by Bethlehem's previous proposals which were less than the respective estimates furnished to him by Brown for use in connection with said conference (R., pp. 115-16).

Affirmed.

191. Powell had also determined in advance of the conference of January 3, 1918, that Bethlehem would not undertake the construction of the ships

in controversy under a lump-sum form of contract, and that he would insist upon the adoption of the half-savings form which had been originated by him and suggested in Bethlehem's proposal of December 13, 1917 (R., pp. 190-1, 470-1).

Affirmed.

192. Bowles and Radford had known both Powell and Brown intimately for many years prior to December, 1917, and were fully informed as to their shipbuilding experience and ability (R., pp. 27-30, 258, 488, 1013).

Affirmed.

193. At the conference of January 3, 1918, Bowles endeavored without success to persuade Powell to accept lump-sum contracts for the tank and cargo ships covered by Bethlehem's proposals. Powell refused to accept lump-sum contracts for such ships, and Bowles was finally obliged to acquiesce in the half-savings form suggested by Powell in order to reach an agreement (R., pp. 470-1, 193-4, 214).

Affirmed.

194. At the conference of January 3, 1918, Powell represented that the estimates submitted by Bethlehem for the tank and cargo ships then under discussion were fair and reasonable and argued in support of their propriety (R., p. 111).

Affirmed.

195. At the conference of January 3, 1918, as a result of objections made by Bowles, Powell made several reductions in the estimates submitted by

Bethlehem, until he arrived at the figures subsequently named as the base prices or "estimated actual cost to the contractor" designated in the respective contracts in controversy (R., pp. 110-112).

Affirmed.

196. At the conference of January 3, 1918, neither Bowles, Radford, nor any other representative of the Fleet Corporation, submitted or suggested to Bethlehem any estimates or counter estimates, their criticism being limited to the opinion expressed by Bowles that the original and reduced estimates submitted by Powell were too high (R., pp. 110-112, 735-6).

Affirmed.

197. At the conference of January 3, 1918, upon Powell's refusal to further reduce Bethlehem's estimates below the amounts subsequently named as base prices in the respective contracts, Bowles questioned Brown as to the propriety of such prices and was assured by Brown that they were about as accurate as could be arrived at under the circumstances (R., p. 112).

Affirmed though it could be stated more nearly in the language of Brown.

198. At the conference of January 3, 1918, upon being advised by Brown that the reduced estimates insisted upon by Powell were about as accurate as could be arrived at under the circumstances, Bowles and Radford agreed to such prices subject to confirmation by Piez (R., pp. 114-5).

Affirmed. See 197.

199. Following the conference of January 3, 1918, Bowles and Radford reported to Piez under date of January 5, 1918, as follows (Ex. G-117, Doc. Ev., p. 258):

"January 5, 1918

Memorandum for the Vice President & General Manager:

Bethlehem Shipbuilding Corporation, Ltd.

We hand you herewith the Bethlehem Shipbuilding Corporation's proposal dated December 19, for additional construction at their various plants, amounting in all to 19 vessels, exclusive of tugs. It may be noted that, with the exception of three ships, the vessels in question are troop ships and tankers—ships of a type that only real shipbuilders can produce satisfactorily. As is well known, we have been having difficulty in placing such vessels.

We wish to place on record the fact that the Bethlehem Shipbuilding Corporation's representatives have insisted on comparatively high prices for these vessels; that they have only with difficulty been persuaded to quote us on the types of ships referred to; and, that their attitude has been characterized by an arbitrary refusal to guarantee or stand behind delivery dates. In other words, it was difficult to persuade them to quote even a tentative delivery date, and they refused positively to accede to a bonus and penalty clause for delivery.

The letter herewith, addressed to the Bethlehem Shipbuilding Corporation, in reply to

their proposal, has been prepared for your signature and is now presented with the recommendation that it be signed. While the prices we have agreed to, with representatives of the Bethlehem Shipbuilding Corporation, are not satisfactory to us, nevertheless, they represent a material reduction from the prices quoted by that Corporation. Realizing that the Nation will need these vessels we have been actuated by the belief that further delay in placing the contracts should be eliminated and we believe we have made the best compromise possible under very difficult conditions.

F. T. Bowles,
Manager,
Division of Steel Ship Construction.

G. S. Radford,
Manager,

Enclosures

Contract Division."

Affirmed.

200. At the time of the negotiations relating to the contracts in controversy, the relations between Powell and Piez were very close. Piez, as Powell knew, had had no shipbuilding experience whatsoever, and had implicit confidence in Powell's integrity and shipbuilding ability and experience, and was accustomed to look to him for information and assistance with respect to matters of shipbuilding (R., pp. 737, 748, 871, 871 (a), 879).

Affirmed.

201. Upon his receipt of the report of Bowles and Radford, dated January 5, 1918 (Ex. G-117), Piez endeavored to get Powell to agree to a further reduction in the prices tentatively agreed upon at the conference of January 3, 1918 (R., p. 879).

Denied. Not supported by the evidence.

202. Powell insisted that the prices tentatively agreed upon at the conference of January 3, 1918, were fair and reasonable, and in reliance upon such representations Piez confirmed said prices by his letters of January 5th, 1918, copies of which appear as Exhibits G118, 119, 120 (R., pp. 879, 113-5).

Denied. Not supported by the evidence.

203. At the time of awarding the preliminary contracts represented by the letter of January 5, 1918 (Exs. G-118, -119 and -120), Contract No. 153, dated December 17, 1917. (Ex. G-198), between the Fleet Corporation and the Moore and Scott Iron Works of Alameda (the name of which Company was subsequently changed to the Moore Shipbuilding Corporation), provided for the construction of six tankers of 10,000 deadweight tons each, upon a cost-plus as distinguished from a lump-sum basis (R., pp. 888-9).

Affirmed.

204. The ships referred to in Piez's letters of January 5th, 1918 (Exs. 9-118, 119, 120), became the subjects of the respective contracts in controversy, dated December 31, 1917 (Ex. C), the base prices and fixed fees designated in said contracts

being the respective base prices and fixed fees confirmed by said letters (R., pp. 630-4).

Affirmed.

205. In agreeing to the base prices and fixed fees named in the respective contracts in controversy, dated December 31, 1917 (Ex. C), the Fleet Corporation relied upon Bethlehem's representations that the estimates submitted by it to the Fleet Corporation were fair and reasonable and about as accurate as could be arrived at under the circumstances.

Denied. See Exhibit G, 117 (Request 199 supra).

206. Under date of January 17, 1918 Brown addressed the following letter to the Fleet Corporation relating to Union Hulls Nos. 215-16 subsequently included in Contract No. 230 (Ex. G-122, Doc. Ev., pp. 272-3):

> "Referring to your letter of the 5th instant with reference to Hulls Nos. 150, 151, 153 and 170, we hereby confirm the oral advice given to you by our Mr. Brown that in advising you in regard to our stock ships under construction at our Union Plant we inadvertently omitted to report that we had at said plant general plans and specifications of and had ordered some materials for two other stock vessels, to which we assigned on our books the numbers 214 and 216. * * *
>
> "The materials ordered for these vessels consist of structural steel and anchors and chains. * * *

"If you shall decide that these two hulls are covered by your requisition order, we desire that they shall be treated in the same way and covered by contracts the same as our Hulls Nos. 150 and 153. The estimated price of each is to be $2,124,000, with a fixed profit of $212,400 for each vessel and one-half of any saving under the estimated price, as provided in such contract."

Affirmed.

207. Under date of April 8, 1918, Piez replied to Bethlehem's letter of January 17, 1918 (Ex. G-122), as follows (Ex. G-128, Doc. Ev., p. 377):

"In reply to your letter of January 17th offering to construct two of your stock cargo vessels of about 11,800 tons d. w. capacity, for the Board, you are hereby given an order, as a preliminary step to entering into contract with the Corporation, for the construction of the above vessels; the vessels to be constructed under a cost plus fee basis form of contract, the estimated base price to be $2,000,000.00 per vessel, with a minimum fee of $200,000.00 per vessel. Any saving cost to be divided equally between the Corporation and yourself."

Affirmed.

208. Under date of April 16, 1918, Powell replied to Piez's letter of April 18, 1918 (Ex. G-128), as follows (Ex. G-130, Doc. Ev., p. 383):

"Your letter of the 8th instant replied to ours of January 17th last, and as a preliminary step to entering into contract with the Corpora-

tion for the construction of two stock vessels known as Hulls 215 and 216 to be constructed at the Union Plant, the Corporation offers an estimated base price of Two Million ($2,000,000.00) Dollars per vessel and a minimum fee of Two Hundred Thousand ($200,000) Dollars.

"This Company considers these prices as inadequate to afford it a proper remuneration for its efforts.

"In view of the above, it is strongly urged that no reduction be made in our original base price, but as stated in our conference yesterday, in order to prevent further delay in the construction of these vessels, we will accept as a base price on them Two Million Seventy-Five Thousand ($2,075,000) Dollars and a minimum fee of Two Hundred Seven Thousand Five Hundred ($207,500) Dollars, any saving in the cost to be divided equally between the Corporation and this Company—and with the further understanding that the contract for these vessels will be in all other respects the exact duplicates of those executed for Hulls 150, 153 and 170, building at our Union Plant."

Affirmed.

209. Under date of April 22, 1918, Piez replied to Powell's letter of April 16, 1918 (Ex. G-130) as follows (Ex. G-133; Doc. Ev., p. 389):

"In reply to your letter of the 16th instant, stating that you consider the estimated base cost named in our letter of the 8th instant too low to insure you a workable profit, and asking

that it be increased to not less than $2,075,000 with a corresponding minimum fee of $207,500 per vessel, you are advised that in view of the statements contained in your above letter the Corporation agrees to the increase in question. Accordingly the estimated base price stated in our letter of the 8th instant should be modified to read $2,075,000, with a corresponding increase in minimum fee to $207,500 per vessel."

Affirmed.

210. In agreeing to the base price and fixed fee designated in Contract No. 230 covering Hulls Nos. 215 and 216, Piez relied upon Bethlehem's representations, in effect, that les prices would be inadequate to afford it fair and reasonable compensation.

Denied as stated.

211. By letter dated February 25th, 1918 (Ex. G-125), Powell advised the Fleet Corporation that "*owing to the rapid increase in the supply of labor at the Sparrow's Point Plant,*" Bethlehem was in a position to build four additional tankers of 10,000 d. w. t., duplicates of those covered by Contract No. 179, and three additional cargo ships of 7,400 d. w. t., duplicates of those covered by Contract No. 178, as well as to specify delivery dates, and stated (Doc. Ev., p. 326):

"We propose to construct the above vessels for the same price and under the same terms and conditions as are embodied in the contracts now in force between our respective Corporations, except as regards deliveries given above.

We feel that in order to operate this plant with the greatest efficiency, it will be necessary to obtain additional tonnage. Otherwise, by the latter part of 1918 there will be several unoccupied ways and if the United States Shipping Board, Emergency Fleet Corporation have contracted for their full requirements, we respectfully request that we be permitted to negotiate with outside parties for the available space."

Affirmed.

212. As a result of the efforts of the Fleet Corporation to obtain a reduction in the base prices proposed in Powell's letter of February 25, 1918 (Ex. G-125), Powell addressed to it a letter dated March 7, 1918, reading, in part, as follows (Ex. G-126, Doc. Ev., p. 337):

"On February 25th this Company submitted a proposal for additional tonnage to be constructed at the Sparrows Point Plant of the Bethlehem Shipbuilding Corporation, Ltd.

"On the 1st instant the Vice-President and General Manager of the Emergency Fleet Corporation discussed by telephone with the writer the prices quoted on these vessels.

"Please be advised that this Company cannot offer these vessels to the Emergency Fleet Corporation on any lower basis than that quoted in our letter above mentioned, since its mature judgment leads it to believe that a less price will not yield a living profit."

Affirmed.

213. In reply to Powell's letter of March 7, 1918 (Ex. G-126), Piez wrote to Bethlehem under date of March 18, 1918 (Ex. G-127) as follows (Doc. Ev., p. 341):

> "In reply to your letter of the 7th instant, relative to your proposal of February 25th, covering the construction of four 10,100 ton tankers and three 7,400 ton cargo vessels at your Sparrows Point plant, the said vessels to be similar to those you are now building for the Board under contracts Nos. 179 and 178, respectively, you are hereby given an order for the construction of the above vessels under the terms of the said contracts with the exception that the estimated base cost in the cases of the tankers is to be reduced to $2,000,000 and in the case of the cargo vessels to $1,295,000; the fee contemplated by your present contracts, in both instances, to remain the same.
>
> "Kindly acknowledge receipt of this letter and signify your acceptance or rejection of the above order."

Affirmed.

214. The tank and cargo ships referred to in the foregoing correspondence (Exs G-125, -126, -127) became the subject of Contract No. 226 (Ex. C).

Affirmed.

215. In agreeing to the base prices and fixed fees designated in Contract No. 226 (Ex. C), Piez relied upon Bethlehem's representations, in effect, that its

mature judgment led it to believe that less prices would not yield it a living profit.

Denied as stated.

216. In agreeing to the base prices and fixed fees designated in the remaining contracts in controversy, dated subsequent to December 31, 1917 (Ex. C), the Fleet Corporation relied upon Bethlehem's representations, in effect, that less prices would not afford it fair and reasonable compensation for the services to be performed by it under the respective contracts.

Denied as stated.

217. The troop ships similar to those covered by the contract in controversy No. 182, constituted the most difficult class of work undertaken by Bethlehem for the Fleet Corporation.

Affirmed as substantially correct.

218. The said troop ships were not only more intricate in design and more difficult to build than either the tank or cargo ships which Bethlehem undertook to build under the contracts in controversy, but it was also contemplated that they would require very much longer to build than either said tank or cargo ships. (Exs. G-104, 109; Doc. Ev., pp. 205, 226.)

Affirmed.

219. In its proposal of December 19, 1917 (Ex. G-109), Bethlehem proposed to build the two troop ships subsequently included in Contract No. 182 (Ex. C), "on a straight cost and percentage basis" for a

fee of fifteen per cent. of cost. (Doc. Ev., pp. 227, 228).

Affirmed.

220. The fee of fifteen per cent. of cost proposed by Bethlehem as its compensation for the construction of the troop ships included in Contract No. 182 (Ex. C) was unacceptable to the Fleet Corporation and a fee of ten per cent of actual cost was agreed upon, said cost to exclude any allowance for Federal taxes. (Ex. G-118; Doc. Ev., p. 261; Contract No. 182, Articles 17, 19).

Affirmed.

221. By letter, dated December 14, 1917 (Ex. G-107), Bethlehem offered to construct Hulls Nos. 150, 151, 153 and 170 subsequently included in Contract No. 191, upon a lump-sum basis (Doc. Ev., p. 216).

Denied. The offer was on a lump-sum basis plus wage increases.

222. By letter, dated December 14, 1917 (Ex. G-43), Bowles replied to Bethlehem's proposal of December 14, 1917 (Ex. G-107), as follows:—

> "The Fleet Corporation has received your letter of December 14th in regard to Hulls Nos. 150, 151, 153 and 170 at the Union Iron Works building for your own account and which were requisitioned by the Fleet Corporation under its order of August third.
>
> "The Corporation notes that, having been invited to submit a price for the completion of these vessels in accordance with the original specifications under which you had begun them,

you now renew the offer originally made October 26, 1916, to complete these ships at a price of $205.00 per d. w. ton.

"The proposition as originally made was unsatisfactory to the Fleet Corporation and considered to be in excess of the just compensation which the law requires.

"You are now informed that the Fleet Corporation has decided to award you, as just compensation and a reasonable price for the completion of these vessels, actual cost plus ten per cent; with the understanding that the vessels shall meet the full military requirements; that the plans are to be approved by Lloyds and the vessels subject to Lloyds' survey, and also satisfactory to and to pass the inspection of the United States Steamboat Inspection Service for war-zone requirements."

Affirmed.

223. Under date of October 9, 1918, Piez addressed the following letter to the Board of Trustees of the Shipping Board relating to the troop ships subsequently included in Contracts Nos. 340 and 465. (Ex. B-6, Doc. Ev., p. 494):

"This contract has been executed by both parties and is awaiting formal approval by the Board.

"The reason the contract was let to the Sparrows Point plant of the Bethlehem Shipbuilding Corporation is that, that plant is one of the few in our country properly equipped and organized to construct the intricate troop ships.

"This decision was reached after a very careful study of the capabilities of our shipyards, the contracts then in existence with them and the possibility of getting the troop ships in time to make them most useful.

"Similar contract was made with the New York Shipbuilding Corporation after the same sort of investigation, and with Bethlehem Shipbuilding Corporation, Ltd., at Alameda.

"The troop ship is of a new design and the cost thereof is a matter only of estimate. There is no precedent to guide us. Not any of the contractors would agree to build the ships on a lump-sum basis. It was therefore necessary for us to place the contract on a cost and fee basis. The preliminary estimates showed that the ships would probably cost $4,160,000 each. We negotiated with the contractor and procured his consent to a fee of $320,000 per ship which is approximately 7½% of which we thought the ship would cost, but we wish to have some incentive on the contractor's part to holding the cost down. The best device that we have found for that purpose, is to fix an estimated basis cost satisfactory to ourselves and give the contractor a share in savings, if the actual cost be less than the estimated basis cost.

"In fixing these estimated basis costs, care must be exercised that they be not placed at too low a figure, for if they are, the probabilities are that the contractor will lose interest in keeping the cost down as soon as it finds that the ship will cost more than the estimated basis cost.

"We discussed this matter with the Board at the time the commitments were made last Spring, and showed how we intended to fix the basis cost. At the suggestion of the Board, our method of fixing the basis cost was not kept on the record, the Board fearing that such a record might be an embarrassing precedent.

"In the contracts now awaiting approval the basis cost is stated at $4,160,000, which is Bethlehem's estimate; and there is a provision that the basis cost might be revised after we had had an opportunity of making a fuller investigation.

"There is submitted herewith, a memorandum dated October 2nd, from the Manager of the Division of Steel Ship Construction showing in outline how their investigation was made. To that memorandum there is attached a detailed estimate submitted by the shipbuilder for similar ships to be built at Alameda. The total estimate cost of those ships is stated to be $4,464,100. Mr. Cox estimates that the proper *bare cost* of the Sparrow's Point ship should be $3,950,000. Based on this bare cost, if we were to follow out our plan for fixing the estimated base cost to be inserted in the contracts, the said estimated basis cost would be $4,443,500. This is considerably in excess of the shipbuilder's estimated basis cost, and we therefore desire the contract as submitted to be approved.

"These figures mean that if the ships are constructed for the bare cost as shown by our own figures and those of Newport News Shipbuilding and Dry Dock Company the contractor will re-

ceive in addition to its $320,000 fee, one-half of the difference between $3,950,000, and $4,160,000, to wit, $210,000 or a total of $425,000.

"There was no separate estimate made of the Sparrows Point Ships because they are identical with the Alameda ships.

"The fee paid in the Alameda contract is $300,000 instead of $320,000 for the Sparrows Point ships, because we are supplying all of the funds necessary to build the former yard. We believe that the contractor is entitled to a higher fee where it is supplying its own yard and equipment."

Affirmed.

224. With respect to said troop ships subsequently included in the limited "half-savings" Contracts Nos. 340 and 465, Bethlehem, prior to October, 1918, had submitted to the Fleet Corporation, detailed estimates of cost similar to the detailed estimates made in normal times for a new type of construction (Ex. B-6, Doc. Ev., p. 495; R., p. 861).

Affirmed. These ships were all west coast ships.

225. The "bare cost" referred to in the said letter addressed by Piez to the Board of Trustees of the Shipping Board under date of October 9, 1918 (Ex. B-6) was intended to represent the minimum price at which it would be possible for Bethlehem to complete the troop ships there referred to (R., pp. 861-2).

Denied. Not supported by evidence.

226. With respect to the troop ships referred to in the said letter addressed by Piez to the Board of Trustees of the Shipping Board under date of October 9, 1918, (Ex. B-6) it was contemplated by the Fleet Corporation that it would not be possible for Bethlehem to effect any "savings" against the respective "bare cost" estimates there set forth (R., pp. 861-2).

Denied. The exhibit seems to show the contrary.

227. With respect to the troop ships subsequently included in Contract No. 465 (Ex. C), it was contemplated by the Fleet Corporation that Bethlehem's total compensation per ship would not exceed eleven (11%) per cent of the base price of $4,160,000.00 designated in said contract.

Affirmed.

228. Thirty-two cargo ships under construction at the shipyards of the American Shipbuilding Company were requisitioned by the Government in August, 1917. Subsequently the Fleet Corporation entered into contracts with that Company providing for the construction of one hundred and seventy-six additional cargo ships for lump-sum prices, said contracts being similar in form to the contract, a copy of which appears as Exhibit G-196.

Affirmed.

229. Under date of October 2, 1918, Charles Schwab, who was then Director General of the Fleet Corporation, addressed the following letter to Edward N. Hurley, Chairman of the Shipping Board, relating to the said contracts between the Fleet Corporation and the American Shipbuilding Company (Ex. G-160, Doc. Ev., p. 492):

"Last week Mr. Farr sent me a copy of the annual report of his Company showing the profits which they had made during the fiscal year ending June 30, 1918, to be, approximately, 80% net profit on their outstanding common stock after setting aside large sums for war taxes and a moderate amount of depreciation.

"I immediately sent for Mr. Farr and demanded that he consent at once to a reduction in price on all of his contracts. He claimed that the large profits were made out of the commandeered ships and that only a few of his direct contract ships had been completed and delivered during the fiscal year covered by the report. I pointed out that this argument had little weight because his contract ships were more expensive to us than the commandeered ships and that his material and labor protections were such that very likely during the coming year his Company would make a great deal more than they did during the past year. His Company had contracts for a total of 176 ships in addition to 32 commandeered ships. The total program exceeds 675,000 tons. If the shipbuilding company were to make as much per ton as they, apparently, made during the preceding year they would have a net profit of something in excess of $20,000,000 on outstanding common stock issue of about $7,800,000. It is Mr. Farr's expectation that the entire program will be completed before the end of 1919.

"The price fixed in the contracts between the American Shipbuilding Company and the Fleet Corporation was agreed to only after extended

negotiations and as to the last contract made in May, 1918, the price was fixed after extended conferences, not only with Mr. Farr, but with all of the other lake shipbuilders, and was consented to by me only upon the assurance by all of them that the price was a reasonable one.

"Mr. Farr demurred at making any reduction, so that, acting on Mr. Cuthell's advice, I told him that we would amend all his contracts so as to limit his Company to what we considered to be 'just compensation.'

"Mr. Farr then agreed that he would execute binding agreements modifying all his contracts so that in no event would his Company make in excess of 10% profit. All Federal taxes are to be paid out of the 10% profit. He likewise agreed that his Company would absorb all the $1,200,000 for plant extension which we approved in May and two-thirds of which we were to have absorbed in the price of the last contract ships.

"I think that this readjustment is a fair one and that it will prove an object lesson to any other contractors who think that they can take advantage of us to obtain excessive prices for ships.

"I figure that this reduction in price will save in the neighborhood of $12,000,000."

Affirmed.

230. At the time of the negotiations relating to the contracts in controversy, approximately ten per cent of actual cost was regarded as affording just

and reasonable compensation for ship construction undertaken for the Fleet Corporation under cost-plus contracts.

Denied. Not supported by the evidence when so broadly stated.

231. At the time of the negotiations relating to the contracts in controversy, approximately ten per cent of actual cost was regarded as affording just and reasonable compensation for ship construction undertaken for the Fleet Corporation under lump-sum contracts.

Denied. See 230.

232. At the time of the negotiations relating to the contracts in controversy, ten per cent., or approximately ten per cent of actual cost, was regarded as affording just and reasonable compensation for the most difficult class of ship construction undertaken for the Fleet Corporation under the "half-savings" form of contract.

Denied. See 230.

233. Under the terms of the contracts in controversy, all additional plant facilities required by Bethlehem for the construction of the ships in controversy were to be paid for by the Fleet Corporation. Each of said contracts also provided that the Fleet Corporation would from time to time advance such sums as might be necessary to constitute and to keep constituted a fund from which to finance the work of constructing the ships to be constructed under said contract, to provide for payments to be made for materials, and for wages and salaries of

persons employed upon said work (see Contracts, Article 15).

Denied. Not supported by the evidence.

234. The estimates of cost designated as base prices in the respective contracts in controversy, the actual cost and actual base cost, (*i. e.*, actual cost exclusive of the amounts representing wage rate increases and the cost of changes and extras), of the respective ships covered by said contracts are as shown by Exhibits "A" and "B" attached to the Government's brief.

Affirmed.

235. As shown by Exhibit B-32, the "savings" with respect to Hulls Nos. 150, 151, 153 and 170, completed August 24, 1918, July 2, 1918, September 30, 1918, and May 8, 1919, respectively averaged approximately $672,000.00 per ship, while the returned base cost of direct labor amounted to approximately $604,000 per ship. The "savings" with respect to said ships not only exceeded the total returned base cost of direct labor but amounted to over eighty-eight per cent, of the total returned base cost of labor, operating expense and administrative and general expense, including depreciation.

Affirmed.

236. As shown by Exhibit B-32, the "savings" with respect to Hulls Nos. 215 and 216 completed May 27, 1919, and June 30, 1919, respectively, averaged approximately $644,000 per ship, or approximately $199,000 in excess of $444,997.87, representing the total returned base cost of direct labor for each ship, and approximately $13,000 in excess of

the total returned base cost per ship of direct labor, plant operating expense, administrative and general expense, and depreciation.

Affirmed.

237. The average "savings" with respect to the six tankers of approximately 9,100 deadweight tons constructed at Fore River under Contracts Nos. 183 and 229, amounted to approximately $398,000 per ship, while the returned base cost of direct labor averaged approximately $444,000 per ship (Ex. B-32).

Affirmed.

238. The total "savings" with respect to all of the tank and cargo ships in controversy amounted to approximately $26,759,000, while the returned total base cost of direct labor for said ships amounted to approximately $29,775,000.

Affirmed.

239. Subsequent to the completion of the ships in controversy the Fleet Corporation requested Bethlehem to explain and justify the estimates of cost designated as base prices in the respective contracts in controversy, and the enormous discrepancies between such estimates and the respective actual base costs.

Affirmed.

240. In reply to such requests, the Fleet Corporation was at first advised by representatives of Bethlehem that its original estimates of cost with respect to the contracts in controversy had been made upon the backs of envelopes, or on scratch

paper, and were no longer available (R., pp. 509-15, 534-5, 541-2, 796-800, 806).

Denied, because as stated it is not supported by the evidence.

241. By letter dated January 17, 1927 (Ex. G-32), Government counsel addressed a letter to Bethlehem counsel, reading in part as follows:

> "Estimates of Cost for Contract Ships.
>
> "Request is made for all figures, reports, working papers and other data used by Bethlehem Shipbuilding Corporation, Ltd., as a basis for the estimates of actual cost submitted with the proposals which resulted in contracts numbered 177, 178, 179, 182, 183, 184, 191, 196, 226, 230, 299, 300, 301, 312, 313, 314, 340, 465 and 4989."

Affirmed.

242. By letter dated March 22, 1927 (Ex. G-33) Bethlehem counsel replied to said letter of January 17, 1927 (Ex. G-32) as follows (Ex. G-33):

> "Referring to Mr. Parker's letter of January 17th, requesting certain information * * * estimates of cost for contract ships. We have and will furnish the working papers used in making these estimates, but these will not show estimates of cost in detail as requested."

Affirmed.

243. As representing its alleged compliance with its promise to furnish the working papers used in making the estimates submitted in the proposals

resulting in the contracts in controversy, Bethlehem during August, 1927, submitted to Government counsel a photostatic copy of the chart (Exs. G-34, 34½), without offering any explanation or information as to the manner in which the chart prices had been determined (R., pp. 118-119).

Affirmed.

244. Under date of January 16, 1928, Government counsel addressed the following letter to Bethlehem counsel (Ex. G-35):

> "Several months ago you furnished us with a diagram or chart which I understand was represented by you to be the only working paper used by Bethlehem in making its various estimates of cost for the contract ships involved in the above controversy.
>
> "Since then, as you know, I have on several occasions endeavored to ascertain whether or not Bethlehem would be willing to furnish us with an explanation of the manner in which this diagram or chart had been used in making the estimates in question as well as an explanation of the following notation thereon; 'June, 1922.' Will you please advise us as to Bethlehem's final position with respect to this explanation."

Affirmed.

245. Under date of January 18, 1928, Bethlehem counsel replied to Government counsel as follows (Ex. G-36):

> "I have your letter in which you ask whether we would be willing to furnish you with an ex-

planation of the diagram or chart used in making up the estimates for the original contract ships.

"As I have told you, this chart was made up by Harry Brown, who was at the time technical manager of Bethlehem Shipbuilding Corporation, and had previously been vice-president of the Fore River Shipbuilding Co., and its successor, the Fore River Shipbuilding Corporation. Whatever working papers he had in making up his figures have been destroyed, and even if they were in existence would probably be unintelligible to anyone but himself. Therefore, your request amounts in substance to a request that we furnish you in advance of the trial with a statement of what Mr. Brown will testify to. In my experience this is rather an unusual request, but I am quite willing to furnish you a copy of his statement as given to us on condition that you will agree that this is to be considered as a document produced at the call of the other side, and that in the event Mr. Brown is unavailable as a witness at the trial, his statement may be offered in evidence by either party as an explanation of the chart, with the same effect as if it were a part of the chart itself."

Affirmed.

246. Under dates of June 22 and 29, 1928, respectively, Bethlehem counsel submitted to Government counsel an alleged explanation of the chart, copies of which "explanation" appear as Exhibit G-155. Said "explanation" was furnished in pur-

suance of the understanding set forth in a letter dated June 29, 1928 (Ex. G-174), addressed by Bethlehem counsel to Government counsel reading in part as follows:

> "I am handing you herewith this statement in explanation of the graph or chart which was the basis of the estimates of cost on the contract ships.
>
> "*I am furnishing this in the hope that it may facilitate your work of preparation and more narrowly define the issue on the allegation of fraud.*
>
> "It is understood that this paper is not to be used by either of us as substantive evidence, although you are at liberty to use it in cross-examination of Mr. Brown to the same extent as you might use a signed statement for that purpose. * * *"

Affirmed.

247. Under date of October 26, 1928, counsel for the Government addressed a letter to counsel for Bethlehem, a copy of which appears as Exhibit G-37, reading in part as follows:

> "In connection with Mr. Harry Brown's description of his method of arriving at the costs delineated on his graph, information is requested as to whether or not Mr. Brown used the cost data of any hulls other than 253-4 and 158-9. If Mr. Brown did use the cost data of other hulls, information is requested as to which hulls were so used and what the data was in connection with those hulls. Information is also

desired as to whether Mr. Brown applied the same factors to the data on these other hulls as he applied to Hull 253 or whether he used other factors and, if so, his method of arriving at those factors."

Affirmed.

248. By letter dated October 27, 1928, a copy of which appears as Exhibit G-38, counsel for Bethlehem replied as follows:

"Answering your letter of October 26th:

"(1) As explained in Mr. Brown's memorandum the only hulls which he considered in arriving at his estimate were 253-254, 158-159."

Affirmed.

249. By letter dated July 6, 1928, a copy of which appears as Exhibit G-21, Government counsel requested Bethlehem to explain the discrepancy between Brown's alleged estimate as to the cost of all materials required for the construction of a tanker of 9,100 deadweight tons, as appearing in Exhibits G-154-155, and the actual cost of such materials with respect to Hulls Nos. 1376 to 1381, inclusive, built under Contracts Nos. 183 and 299.

Affirmed.

250. By letter dated August 8, 1928, a copy of which appears as Exhibit G-22, Bethlehem replied to the foregoing request as follows:

"With reference to Mr. Brown's request in Item 9 of his letter for 'explanation of the discrepancy between Brown's estimate as to the cost of all material required for the construc-

tion of the tanker of 9100 d. w. t. and the actual cost of such materials with respect to Hulls 1376 to 1381, inclusive,' we do not think that we should be asked to furnish information of this character or that it is information which will be of any assistance to Mr. Brown in the preparation of his case, particularly in view of the fact that if any explanation of any such discrepancy becomes material, it will be so as a matter to be shown as a part of our case rather than as any part of the Government's case."

Affirmed.

251. By letter dated September 21, 1928, a copy of which appears as Exhibit G-176, Government counsel requested Bethlehem to furnish a list of the material items with their respective prices alleged to have been considered by Brown in arriving at his factor of increase for material other than that covered by Job 12, in connection with his alleged "explanation" presented by Exhibits G-154-155.

Affirmed.

252. By letter, dated September 25, 1928, a copy of which appears as Exhibit G-177, Bethlehem replied to the foregoing request as follows:

"8. Request for list of items, with their prices, considered by Mr. Brown in arriving at his factor of increase for material other than that covered by Job 12.

"No record of such items and their prices has been preserved."

Affirmed.

253. The "explanation," copies of which appear as Exhibits G-154, -155, represented the first explanation made to the Fleet Corporation or the Government as to the alleged methods employed by Bethlehem in determining its estimates for the ships in controversy.

Affirmed.

254. Until the previous hearing before Justice Roberts, no explanation was offered for the fact that the estimates originally submitted by Bethlehem were substantially in excess of the chart figures, and it was not until such hearing that this discrepancy was admitted by Powell to represent an allowance "for trading purposes" arbitrarily added by him to the figures furnished to him by Brown (R., pp. 732-4).

Affirmed.

255. In submitting the "explanation" (Exs. G-154-155) it was understood by all parties concerned that it was intended and offered as an explanation of the methods alleged to have been employed by Brown in plotting the total cost and per ton lines, including the East Coast cargo line, as such lines now appear upon the chart (Ex. G-34½).

Denied. The evidence does not disclose what all parties understood.

256. The "explanation" (Exs. G-154-155) is not a true explanation of the manner in which the chart (Ex. G-34½) was prepared.

Denied, as stated.

257. The chart (Ex. G-34½) was not based upon the cost analysis referred to in the "explanation" (Exs. G-154-155).

Denied, as stated.

258. Exhibits G-154-155 represent a fictitious "explanation" which was originated by Brown subsequent to his re-employment by Bethlehem in October, 1924, in an attempt to justify the estimates designated as base prices in the respective contracts in controversy.

Denied. The evidence does not support this request.

259. In order to build up his alleged estimates to the chart prices in connection with the explanation presented in Exhibits G-154, -155, it was necessary for Brown to disregard the proper basis of the "estimated actual costs" to Bethlehem which were supposed to be designated as base prices in the respective contracts in controversy, and to inflate such estimates by the use of improper factors and figures, the inclusion of improper allowances, and by mathematical mistakes.

Denied. The evidence does not support this request.

260. Bethlehem has failed to explain the true manner in which the chart (Ex. G-34½) was actually prepared.

Denied. See Brown's testimony.

261. Bethlehem has failed to explain the true basis of the estimates submitted to it by the Fleet Corporation.

Denied. See Brown's testimony.

262. No justification has been offered for the discrepancy between the original estimates submitted by Bethlehem, or the estimates finally agreed upon, and the actual returned cost of the respective ships in controversy.

Affirmed as a request for finding of fact, but regarded by the Master as immaterial.

263. No explanation has been offered for the discrepancy between the original estimates submitted by Bethlehem or the estimates finally agreed upon and the actual returned cost of the respective ships in controversy.

Affirmed, but see 262.

264. No justification has been offered for the original estimates submitted by Bethlehem or the reduced estimates designated as base prices in the respective contracts in controversy.

Affirmed, but see 262.

265. In submitting its estimates for the respective tank and cargo ships in controversy, Bethlehem made no use of the cost data available to it relating to the ships previously completed at its respective shipyards (Ex. G-38).

Denied. The evidence is the contrary.

266. The estimates of cost submitted by Bethlehem and designated as base prices for the respective tank and cargo ships in controversy were such as to result in very substantial savings, regardless of whether or not it was able to increase efficiency of management or labor during the period required for the construction of said ships, as com-

pared with the efficiency existing at the time of the negotiations relating thereto.

Denied. The evidence does not support this request.

267. At the time of the negotiations relating to the respective tank and cargo ships in controversy, Powell and Brown knew, or were in a position to know, that the estimates of cost submitted by Bethlehem and designated as base prices for said ships were such as would result in very substantial "savings" regardless of whether or not Bethlehem was able to increase efficiency of management or labor during the period required for the construction of said ships, as compared with efficiency existing at the time of said negotiations.

Denied. The evidence is the contrary.

268. The estimates of cost submitted by Bethlehem and designated as base prices for the respective tank and cargo ships in controversy, were not such as to require any increase in efficiency, as compared with efficiency existing at the time of the negotiations relating to said ships, in order to enable Bethlehem to participate in any substantial "savings".

Denied. The evidence does not support this request.

269. At the time of the negotiations relating to the respective tank and cargo ships in controversy, Powell and Brown knew, or were in a position to know, that the estimates of cost submitted by Bethlehem and designated as base prices for said ships were not such as to require any increase in effi-

ciency, as compared with efficiency existing at the time of the negotiations relating to said ships, in order to enable Bethlehem to participate in any substantial "savings."

Denied. The evidence is the contrary.

270. The estimates of cost submitted by Bethlehem and designated as base prices for the respective tank and cargo ships in controversy were not such as to make the amount of "savings," if any, substantially commensurate with economies resulting from increased efficiency of management and labor.

Denied. See 268.

271. At the time of the negotiations relating to the respective tank and cargo ships in controversy, Powell and Brown knew, or were in a position to know, that the estimates of cost submitted by them and designated as base prices for said ships were not such as to make the amount of "savings," if any, substantially commensurate with economies resulting from increased efficiency.

Denied. See 270.

272. Neither the original estimates submitted by Bethlehem nor the reduced estimates designated as base prices for the respective tank and cargo ships in controversy were such as to require Bethlehem to assume the risk of the possible occurrence of strikes, labor shortage, increases in freight rates or material costs, or other similar contingencies beyond its control, insofar as its participation in "savings" was concerned.

Denied. Not justified by the evidence.

273. At the time of the negotiations relating to the respective tank and cargo ships in controversy, Powell and Brown knew, or were in a position to know, that the original estimates submitted by them, as well as the reduced estimates designated as base prices for said ships were not such as to require Bethlehem to assume the risk of the possible occurrence of strikes, labor shortage, increases in freight rates or material costs, or other similar contingencies beyond its control, insofar as its participation in "savings" was concerned.

Denied. Not justified by the evidence.

274. The estimates of cost designated as base prices in the respective contracts in controversy, did not represent the lowest prices which, according to the best judgment of Powell and Brown, would afford Bethlehem a reasonable opportunity to effect "savings" as a result of its efforts and ability to increase efficiency of management and labor, as compared with average efficiency then existing.

Denied as irrelevant. The word "savings" means nothing in the request as stated.

275. Neither the original estimates submitted by Bethlehem nor the reduced estimates named as base prices for the respective tank and cargo ships in controversy represented fair and reasonable estimates of probable approximate cost of said respective ships, for use in connection with the "half-savings" form of contract.

Denied. The evidence is to the contrary.

276. Powell and Brown knew that the original estimates submitted by them for the respective tank

and cargo ships in controversy, as well as the reduced estimates finally agreed upon, were substantially in excess of any fair and reasonable estimates of probable cost for use in connection with the contracts in controversy.

Denied. The word "substantially" does not fairly reflect the evidence.

277. Powell and Brown knew that the estimates of costs designated as base prices for Hulls Nos. 150, 151, 153 and 170 included in Contract No. 191, were substantially in excess of any fair and reasonable estimates of the probable cost of said ships, for use in connection with the "half-savings" form of contract.

Denied. See 176.

278. The "savings" with respect to the tank and cargo ships in controversy, resulted from the gross and improper inflation of the estimates of cost designated as base prices in the respective contracts.

Denied. This is not justified by the evidence.

279. There is no evidence that the cost of construction of the respective tank and cargo ships in controversy was reduced as a result of the "bonus-for-savings" provisions of the respective contracts.

Affirmed.

280. Schwab became Director General of the Fleet Corporation on or about April 16, 1918, and remained as such until December, 1918. As Director General, Schwab was the executive head of the Fleet Corporation. During the years 1916 to 1919

inclusive, Schwab was also Chairman of the Board of Directors of the Bethlehem Steel Corporation (R., pp. 628-9, 892, Ex. G-1, Bill, par. 26).

Affirmed.

281. The dates of delivery by Bethlehem to the Fleet Corporation of the ships in controversy are as shown by Exhibit G-3.

Affirmed.

282. In entering into the contracts in controversy, the Fleet Corporation acted as the representative and upon behalf of the United States Government.

The Fleet Corporation contracted as principal, although it was, at the time, a publicly acknowledged agency of the United States Government.

CONCLUSIONS OF LAW

1. The contracts in controversy are unenforceable against either the United States of America or the United States Shipping Board Emergency Fleet Corporation.

Denied.

2. The provisions of the respective contracts in controversy relating to the "fixed sum for profit" to be paid to Bethlehem are unenforceable against either the United States of America or the United States Shipping Board Emergency Fleet Corporation.

Denied.

3. The provisions of the respective contracts in controversy providing for Bethlehem's participation in "savings" are unenforceable against either the United States of America or the United States Shipping Board Emergency Fleet Corporation.

Denied.

4. Bethlehem is entitled to retain out of the moneys paid to it on account of the respective contracts in controversy an amount representing the actual cost of construction of the respective ships covered by said contracts, said actual cost being as shown by Exhibit "A".

Affirmed.

5. The United States of America is entitled to receive from Bethlehem an amount representing all sums paid to it on account of the respective contracts in controversy in excess of the actual cost of construction of the respective ships covered by said contracts, said actual cost being as shown by Exhibit "A".

Denied.

6. If it should be held that Bethlehem is entitled to any compensation in addition to the actual cost of construction of the ships covered by the contracts in controversy, said compensation should not exceed the "fixed sum for profit" designated in the respective contracts.

Denied.

REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW SUBMITTED ON BEHALF OF BETHLEHEM SHIPBUILDING CORPORATION, LTD., ET AL.

FINDINGS OF FACT

1. On August 3, 1917 the Fleet Corporation requisitioned all merchant vessels over 2,500 tons then under construction in the various Bethlehem yards.

Affirmed.

2. Sometime in the fall of 1917, Powell, Vice-President of Bethlehem Shipbuilding Corporation, having been to'd that Bethlehem would be required to build additional vessels for the Fleet Corporation, instructed Brown, Bethlehem's Technical Manager, to be prepared to submit estimates on such types and sizes of vessels as Bethlehem might be required to build.

Affirmed.

3. At that time conditions both as to labor, material, and transportation were such that it was impossible to make an accurate estimate of cost.

Affirmed.

4. In normal times, when labor and transportation conditions were stable, and it was possible to obtain firm quotations for material, it had been Bethlehem's practice to prepare estimates in considerable detail. This practice had been abandoned and the estimating department disbanded because conditions were such

that it was impractical and useless to prepare estimates in the usual way.

Affirmed.

5. Following Powell's instructions, Brown sometime in November or early December, 1917, prepared in the form of a graph an estimate of the probable cost of tankers and cargo vessels of any size which Bethlehem might be called upon to build.

Affirmed.

6. Up to that time Bethlehem had no information as to the number, type or size of vessels, except that it was supposed that they would be largely tankers and troop ships, because these were the types of vessels which only experienced ship builders could build.

Affirmed.

7. This estimate was based on the actual cost of a 9,100 ton tanker recently completed at Fore River, and was arrived at by applying to the labor and material costs on this tanker such factors of increase as Brown thought reasonable to cover the increase during the period of construction. He then applied the same factors of increase to the actual cost of each of two 14,950 ton tankers recently completed at Sparrows Point, having first ascertained that the labor and material costs per light weight ton were substantially the same as on the 9,100 ton tanker at Fore River, and having thus determined the approximate cost of tankers of substantially different size, he plotted a curve to represent the approximate cost of a tanker of any size to be built on the East Coast. To arrive at the approximate cost of tankers to be

built on the West Coast, he added five per cent. to cover the difference in labor rates and in the delivered price of materials on the West Coast. The approximate cost of cargo vessels was determined by deducting from the cost of tankers a percentage, varying with the size of the vessel, which from his experience he believed represented the difference between the cost of a cargo vessel and a tanker of the same size.

Affirmed.

8. Brown was an experienced and competent estimator. The method which he used to arrive at his estimates of cost was a reasonable one and the result was as accurate as could be expected under the uncertain conditions prevailing at the time. (Brown pp. 376, 343; Sanford pp. 623-624.)

Affirmed.

9. Brown's estimates were fairly and honestly made.

Affirmed. There is no evidence to the contrary.

10. On December 12, 1917, Powell was instructed by the Fleet Corporation to submit a program for the construction of additional vessels up to the capacity of Bethlehem's yards.

Affirmed.

11. On December 13, 1917, in response to this instruction, Powell wrote to the Fleet Corporation, submitting several alternative programs. In this letter he said:

> "Because of the unprecedented conditions surrounding the Labor and Material Market, it

is impracticable to estimate within a reasonable percentage what will be the actual cost of construction, and it is therefore impossible to submit fixed prices for any of these vessels, except upon a basis so far above estimated cost that any figure acceptable to this Company would not be acceptable to the Emergency Fleet Corporation. It is proposed, however, that they be constructed on the basis of actual cost plus a fee, with an agreed upon probable cost, this company to be paid in addition to the fee one-half of any saving that may be made below this cost figure, and with the further provision that the estimated cost figure will be increased due to any increase in rates of wages that may be approved by the Emergency Fleet Corporation. The definition of cost and the general terms of the contract so far as applicable, to be the same as those for the eighty-five destroyers, contracts for which were signed on December 6th, 1917, by the Navy Department and this Company. The basis of fees and estimated cost to be such as to offer a reasonable probability of a net earning after paying all War and Excess Profit taxes as today existing of Ten Percent. (10%) of the present estimated cost of construction."

Affirmed.

12 The form of contract suggested by Powell, and eventually adopted, was a desirable one from the standpoint of both parties. It was preferable to the straight cost-plus contract, because it provided an incentive to the contractor both to keep down the cost and expedite the work. In order to give this incen-

tive it was essential that the estimated or base cost should be sufficiently liberal to afford a reasonable opportunity to the contractor to cut under it.

Affirmed.

13. Representatives of the Fleet Corporation were familiar with, and approved of, this form of contract. They recognized also that, in order to provide the proper incentive, the base cost must be sufficiently liberal, and, in connection with later contracts, adopted a formula for arriving at the base cost by adding to the estimated amount of so-called bare cost an amount to provide this incentive.

Affirmed.

14. The estimated or base cost named in the contracts was not intended to represent a close estimate of the bare cost of construction, but was intended to be sufficiently liberal to provide an incentive for efficiency, and was so understood and accepted by representatives of the Fleet Corporation.

Affirmed.

15. At a conference between Powell and Admiral Bowles, Manager of the Division of Steel Ship Construction of the Fleet Corporation, on December 18, 1917, a definite program was agreed upon, and Powell was instructed to submit proposals at once.

Affirmed.

16. On December 19, 1917, Powell submitted a definite proposal, based on the form of contract suggested in his letter of December 13.

Affirmed.

17. The estimated base cost named by Powell in this letter was based on Brown's estimates with the addition of approximately 5%, which included an allowance of $2.50 per ton for some high priced steel which Bethlehem had on hand or under contract and proposed to use, but which Brown had not taken into consideration.

Affirmed.

18. On January 3, 1918, there was a conference between Bowles and Radford representing the Fleet Corporation, and Powell and Brown representing Bethlehem, at which Powell's proposal of December 19 was considered. After considerable negotiations, the contracts were closed substantially on the basis of Brown's estimates.

Affirmed.

19. Bowles was an experienced naval constructor. He had been for some years President of Fore River Shipbuilding Company. He was thoroughly competent to check Bethlehem's estimates. He had as his first aide Daniel H. Coxe, an experienced marine architect, who was probably present during part of the conference of January 3.

Affirmed.

20. The dealings between the contracting parties were at arm's length, and the estimated base costs were arrived at by a process of barter and trade. (Radford p. 1000.)

Affirmed.

21. Following the conference of January 3, Bowles and Radford addressed a memorandum to

Piez, Vice-President and General Manager of the Fleet Corporation, recommending the awarding of the contracts. In this memorandum they said:

"January 5, 1918.

Memorandum for the Vice President & General Manager,

Bethlehem Shipbuilding Corporation, Ltd.:

We hand you herewith the Bethlehem Shipbuilding Corporation's proposal dated December 19, for additional construction at their various plants, amounting in all to 19 vessels, exclusive of tugs. It may be noted that, with the exception of three ships, the vessels in question are troop ships and tankers—ships of a type that only real shipbuilders can produce satisfactorily. As is well known, we have been having difficulty in placing such vessels.

We wish to place on record the fact that the Bethlehem Shipbuilding Corporation's representatives have insisted on comparatively high prices for these vessels; that they have only with difficulty been persuaded to quote us on the types referred to; and, that their attitude has been characterized by an arbitrary refusal to guarantee or stand behind delivery dates. In other words, it was difficult to persuade them to quote even a tentative delivery date, and they refused positively to accede to a bonus and penalty clause for delivery.

The letter herewith, addressed to the Bethlehem Shipbuilding Corporation, in reply to their proposal, has been prepared for your sig-

nature and is now presented with the recommendation that it be signed. While the prices we have agreed to, with representatives of the Bethlehem Shipbuilding Corporation, are not satisfactory to us, nevertheless, they represent a material reduction from the prices quoted by that Corporation. Realizing that the Nation will need these vessels, we have been actuated by the belief that further delay in placing the contracts should be eliminated and we believe that we have made the best compromise possible under very difficult conditions.

F. T. Bowles,
Manager,

Division of Steel Ship Construction.

G. S. Radford, Manager,
Contract Division.

Enclosures

Affirmed.

22. Before definitely awarding the contracts Piez checked the prices and in the case of contracts for the larger tankers compared the combined estimated cost and fixed fee with the price at which the Fleet Corporation had awarded a lump sum contract for similar vessels to another shipbuilder.

Affirmed.

23. The estimated base costs used in the contracts represented reasonable estimates of probable cost.

Affirmed.

24. There was no misrepresentation or fraud on the part of Bethlehem in the negotiation of the contracts.

Affirmed.

25. With the exception of the 5,100 ton cargo boats built under Contract No. 314, the average cost to the Fleet Corporation of the cargo and tank vessels of each type and size built by Bethlehem under the contracts in suit, including the fixed fee and half-savings, is less than the average price paid by the Fleet Corporation to other shipbuilders under both lump sum and cost plus contracts for vessels of substantially similar type and size constructed during approximately the same period. (Brown pp. 378-379, 402.)

Denied as stated.

26. The contracts were fairly negotiated and were agreed to by the contracting parties as the best that could be made under the circumstances.

Affirmed.

27. Charles M. Schwab served as Director General of the Fleet Corporation from April 16 until December 12, 1918. During this period he was not an officer, and after April 25, 1918, he was not a director of Bethlehem Shipbuilding Corporation, Ltd. He was at no time a member of the Board of Trustees of the Fleet Corporation.

Affirmed.

28. Schwab accepted the position of Director General at the earnest solicitation of the President of the United States, with the definite understanding

that he would be relieved from any dealings between the Fleet Corporation and Bethlehem or any of its affiliated companies.

Affirmed.

29. The understanding was confirmed by letter addressed to the President and Trustees of the Fleet Corporation, in which Schwab requested that all business between the Fleet Corporation and Bethlehem, or any of its subsidiary companies, be handled entirely by such other officers or agents of the Fleet Corporation as the Trustees might designate. Following this letter the Trustees adopted a resolution that all contracts, after being approved by the Vice President and Secretary, should be submitted to the Board of Trustees for their approval.

Affirmed.

30. During the time he was Director General, Schwab scrupulously observed the conditions under which he accepted his appointment, and refrained from any dealings with Bethlehem. All such matters were handled by the Vice President, Piez, without consultation with or interference or advice from Schwab.

Affirmed.

31. Schwab took no part in the negotiation of the contracts either before or after he became Director General, and at the time he severed his connection with the Fleet Corporation he had no knowledge or means for determining what profit, if any, Bethlehem would realize under the half savings provision of the contracts. (Powell p. 641; Schwab p. 833.)

Affirmed as to Schwab's knowledge. The evidence does not show that Schwab had no means of knowledge had he desired to know.

32. Even if the Fleet Corporation had power to revise its own contracts by reducing the amount to be paid to the contractor, this power was never delegated to the Director General.

Affirmed.

CONCLUSIONS OF LAW

1. The contracts are valid and Bethlehem is entitled to be paid according to contract provisions.

Affirmed.

2. The wage schedule referred to in the West Coast contracts is the schedule promulgated by the Shipbuilding Labor Adjustment Board on November 4, 1917, exclusive of the War Service payment of ten per cent. authorized by the Fleet Corporation on December 10, 1917.

Denied. The applicable Wage Schedule includes the said War Service payment.

3. The wage schedule referred to in the East Coast contracts is the wage schedule in force on January 3, 1918, at the respective Navy Yards named in the contracts.

Affirmed.

4. The Fleet Corporation obligated itself in its individual capacity and not as agent of the United States, for the payments provided for under the contracts, and as such is liable in action at law.

and judgment should be entered against it for the amount found to be owing, together with interest.

Answered, that the Fleet Corporation is liable in action at law No. 11970 for the amount found to be due in the Report of the Master.

5. In the equity suit Bethlehem is entitled upon its counterclaim to a decree against the United States for the amount found to be owing.

Denied. The court has no jurisdiction to make such a decree.

EXCEPTIONS OF THE UNITED STATES OF AMERICA AND THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION TO THE REPORT OF THE SPECIAL MASTER AND REFEREE.

And Now, this 30th day of December, 1935, come THE UNITED STATES OF AMERICA and THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION and except to the Report of the Special Master and Referee in the following particulars, to wit:

1. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 92.

2. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 93.

3. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Find

ing of Fact No. 94. The statement of the Special Master and Referee that "The proposals were not confined to all materials at then existing prices", has no bearing upon the Request.

4. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 95.

5. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 96.

6. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 104.

7. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 105.

8. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 106.

9. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 107.

10. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 108.

11. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 110.

12. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 111.

13. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 112.

14. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 114.

15. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 116.

16. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 117.

17. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 121.

18. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 122.

19. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 125.

20. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 126.

21. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 127.

22. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 128.

23. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 129.

24. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 130.

25. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 133.

26. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 134.

27. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 135.

28. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 136.

29. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 137.

30. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 139.

31. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 140.

32. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 150.

33. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 153.

34. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 154.

35. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 155.

36. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 159.

37. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 160.

38. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 161.

39. To the failure of the Special Master and Referee to unqualifiedly affirm their request for Finding of Fact No. 162.

40. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 163.

41. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 164.

42. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 166.

43. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 167.

44. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 168.

45. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 169.

46. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 170.

47. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 171.

48. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 172.

49. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 173.

50. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 174.

51. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 175.

52. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 176.

53. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 177.

54. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 181.

55. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 189.

56. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 201.

57. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 202.

58. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 205.

59. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 210.

60. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 215.

61. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 216.

62. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 225.

63. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 226.

64. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 230.

65. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 231.

66. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 232.

67. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 233.

68. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 240.

69. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 255.

70. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 256.

71. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 257.

72. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 258.

73. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 259.

74. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 260.

75. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 261.

76. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 262.

77. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 263.

78. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 264.

79. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 265.

80. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 266.

81. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 267.

82. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 268.

83. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 269.

84. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 270.

85. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 271.

86. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 272.

87. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 273.

88. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 274.

89. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 275.

90. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 276.

91. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 277.

92. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 278.

93. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 282.

94. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Conclusion of Law No. 1

95. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Conclusion of Law No. 2.

96. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Conclusion of Law No. 3.

97. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Conclusion of Law No. 5.

98. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Conclusion of Law No. 6.

99. To the affirmance by the Special Master and Referee of the Request for Finding of Fact No. 3 submitted upon behalf of Bethlehem Shipbuilding Corporation, Ltd., et al.

100. To the affirmance by the Special Master and Referee of the Request for Finding of Fact No. 4 submitted upon behalf of Bethlehem Shipbuilding Corporation, Ltd., et al.

101. To the affirmance by the Special Master and Referee of the Request for Finding of Fact No. 5 submitted upon behalf of Bethlehem Shipbuilding Corporation, Ltd., et al.

102. To the affirmance by the Special Master and Referee of the Request for Finding of Fact No. 6 submitted upon behalf of Bethlehem Shipbuilding Corporation, Ltd., et al.

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116. To the affirmance by the Special Master and Referee of the Request for Conclusion of Law No. 1 submitted upon behalf of Bethlehem Shipbuilding Corporation, Ltd. et al.

117. To the finding by the Special Master and Referee in answer to the Request for Conclusion of Law No. 4 submitted upon behalf of Bethlehem

Shipbuilding Corporation, Ltd. et al., to the effect that the Fleet Corporation is liable in action at law No. 11970 for the amount found to be due in the Report.

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tended to deceive the representatives of the Fleet Corporation." (Rep. p. 13.)

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123. To the statement of the Special Master and Referee that "Little more is needed than a reading of the testimony of Radford, who is the Government's witness, to impel the conclusion that the charge of fraud made by the Government against Bethlehem is without foundation." (Rep. p. 15.)

124. To the statement of the Special Master and Referee that "At the time these contracts were entered into, insofar as the evidence before the Master shows, Piez, Admiral Bowles, Radford and Cox had knowledge, or information available, from which knowledge could have been obtained, whereby to judge of the reasonableness, under all of the circumstances, of the estimated base price for the contract ships." (Rep. p. 22.)

125. To the statement of the Special Master and Referee that "The Government has not produced a word of testimony to prove that, had the Government representatives known exactly what the profit to Bethlehem under the contracts dated December 31, 1917 eventually would be, the contracts in question would not have been made because they could produce such profit. The Master must assume that, as the burden was upon the Government to prove this to be the fact in its attack upon the profits from the contracts, the failure of the Government to develop such evidence from Piez, Radford, Cox or Cuthell justifies the inference that had the effort been made the testimony would have proved the contrary, and that the Government's witnesses, if asked, would have testified that regardless of the profit, as the contracts represented the best price obtainable from Bethlehem for the building of the ships, the contracts would have been entered into." (Rep. p. 22.)

126. To the statement of the Special Master and Referee that "The evidence shows, and the Master finds, that the Fleet Corporation made the contracts with open eyes, although resenting the commercial attitude of Bethlehem and condemning Bethlehem for demanding its 'pound of flesh', and did so because of a realization of the necessity of attaining an objective with the shipbuilding program which, without Bethlehem, might not be possible." (Rep. p. 23.)

127. To the statement of the Special Master and Referee that "It is to be remembered, however, that Bethlehem was an old line shipbuilding com-

pany, carrying the burdens of idle invested capital over longtime periods, the maintenance of an experienced and expensive organization, which, during periods of inactivity in the shipbuilding industry, probably was not productive of overhead, such as maintenance, taxes and other carrying charges. All of these, however, were charges incident to the standby service rendered by Bethlehem, to enable it to perform active service when the needs of the Government might require it. It may well be, as Bethlehem contends, that these factors must have been taken into consideration by the representatives of the Fleet Corporation in their determination that, regardless of the opportunity which the contracts would afford to Bethlehem for substantial profits, it was worth the extra cost, if any, to the Government to place the contracts with an old line company and to insure the continuous service of Bethlehem so long as the war needs might call for it." (Rep. pp. 23-4).

128. To the statement of the Special Master and Referee that "The profits afforded to Bethlehem from these shipbuilding contracts are in large measure to be paid, of course, by Bethlehem's fellow taxpayers who supply the funds, Bethlehem contributing, no doubt, most of its 'bonus for savings' as originally anticipated by Powell (pp. 779-784). But, after all, without Bethlehem the World War might have lasted many months longer and the burdens upon these same taxpayers might thereby have been enormously increased." (Rep. p. 24.)

129. To the statement of the Special Master and Referee that "It is fair to assume, even without ref-

erence to Exhibit B-6, that prior to the Armistice information had been acquired by the Fleet Corporation concerning actual cost of the construction work on the contract ships by reason of the current audits for the Fleet Corporation of the Bethlehem contract work, from which a comparison with the estimated base cost could readily have been made." (Rep. p. 24.)

130. To the statement of the Special Master and Referee that "This power of cancellation was one of the reasons which induced Radford to accept the estimates in spite of his belief that the speculative chances for profit under the war conditions were more favorable to Bethlehem than against it. (Radford, R. 1002.)." (Rep. p. 25.)

131. To the statement of the Special Master and Referee that "The foregoing is interesting in that it shows that, in peace times, the Government contracts produced a greater profit to the shipbuilders than the war time contracts of Bethlehem here complained of. It also shows variations between estimates of ship costs and actual costs similar to those testified to by the witnesses as frequent in the industry. (Pp. 668-669.)" (Rep. p. 32.)

132. To the statement of the Special Master and Referee that "The evidence shows, and the Master finds, that as to the later contracts the representatives of the Fleet Corporation had opportunity, which they took advantage of, to determine whether the 'base cost' of Bethlehem would produce a higher net cost to the Government than those contracts of other shipbuilders, and that as a result of deliberate judgment they fixed the 'base cost' of all of

these contracts at what was believed to be as fair and reasonable as could be estimated under all of the existing circumstances (se G. 134, Doc. 391). (Rep. pp. 34-35.)

133. To the statement of the Special Master and Referee that "The evidence also disclosed that the 'educated guess' of Powell and Brown as to the 'base cost' for the contracts of December 31, 1917, produced a still less cost to the Government of ships built under these contracts than under the lump sum or cost plus contracts with other shipbuilders." (Rep. p. 35.)

134. To the statement of the Special Master and Referee that "The Master, for the reasons stated, finds that the charge against Bethlehem of fraud in the making of the contracts under consideration is without foundation upon this record, and that these contracts are valid, enforceable obligations, according to their terms, against the Fleet Corporation." (Rep. p. 36.)

CHARLES D. MCAVOY,
United States Attorney for the Eastern District of Pennsylvania.

JOSEPH J. BROWN,
Special Assistant to the Attorney General.
SOUTH TRIMBLE, JR.,
Solicitor, Department of Commerce.
RALPH H. HALLETT,
Assistant Counsel, United States Shipping Board Emergency Fleet Corporation.

EXCEPTIONS OF BETHLEHEM SHIPBUILDING CORPORATION, LTD., TO THE PROPOSED REPORT OF THE SPECIAL MASTER AND REFEREE DATED DECEMBER 19, 1935.

Bethlehem Shipbuilding Corporation, Ltd., as defendant in the above-entitled suit in Equity No. 3315 and as plaintiff in the above-entitled action At Law No. 11970, excepts to findings and conclusions in the proposed Report of Special Master and Referee in said causes and to findings made or affirmed by the Special Master and Referee upon request for findings of fact and conclusions of law submitted on behalf of The United States of America and The United States Shipping Board Emergency Fleet Corporation as follows:

(1) To the finding on pages 37 and 38 of said Report in the first paragraph under the heading "As to the West Coast Contracts:" that the order of December 8, 1917 therein referred to was an order of the Wage Adjustment Board.

(2) To the finding, opinion or conclusion of the Special Master and Referee in the first complete paragraph on said page 38 that "the wage schedule applicable to the West Coast Contracts, as the schedule in effect January 3, 1918, included the ten per cent. war service bonus theretofore made effective in the West Coast Yards."

(3) To the conclusion stated in the third paragraph on page 44 of said Report that an allowance of interest on the amount found due to Bethlehem Ship-

building Corporation, Ltd., to be computed at the rate of 6% per annum, would not be justified.

(4) To the recommendation contained in the next following paragraph of said Report that interest be allowed upon the several items found due to said Bethlehem Shipbuilding Corporation, Ltd., from the due date for the payment thereof as set forth in said Report, computed at the average of the rates allowable on deposits by member banks of the Clearing House Associations of New York and Philadelphia, since said due dates, under the Rules of said Associations controlling interest rates, and to the recommendation or conclusion in the paragraph next thereafter following that during such periods, if any, when rates were not fixed by such Rules, the rate of interest to be applied shall be that fixed by the Rules next thereafter made effective, upon the ground that interest at the rates so computed upon the amounts found due to Bethlehem Shipbuilding Corporation, Ltd., is less than the amount to which it is entitled by reason of the withholding from it of said amounts, and that it is entitled to interest thereon at the legal rate of six per cent. per annum.

(5) To the finding or affirmance of the finding of fact No. 49 contained in the above-mentioned requests for findings of fact and conclusions of law.

(6) To the finding or affirmance of the finding of fact No. 50 contained in said requests.

(7) To the finding or affirmance of the finding of fact No. 52 contained in said requests.

(8) To the finding or affirmance of the finding of fact No. 89 contained in said requests.

(9) To the finding or affirmance of the finding of fact No. 124 contained in said requests.

(10) To the finding or affirmance of the finding of fact No. 174 contained in said requests.

(11) To the finding or affirmance of the finding of fact No. 178 contained in said requests.

(12) To the finding or affirmance of the finding of fact No. 179 contained in said requests.

(13) To the finding or affirmance of the finding of fact No. 180 contained in said requests.

(14) To the finding or affirmance of the finding of fact No. 185 contained in said requests.

(15) To the finding or affirmance of the finding of fact No. 264 contained in said requests.

Said Bethlehem Shipbuilding Corporation, Ltd., further excepts to the denial of, or failure to find or affirm, requests for findings of fact and conclusions of law submitted on behalf of said Bethlehem Shipbuilding Corporation, Ltd., as follows:

(16) To the denial of the finding of fact No. 25.

(17) To the failure to find or affirm the finding of fact No. 31 as requested.

(18) To the denial of the conclusion of law No. 2.

(19) To the failure to find or affirm the conclusion of law No. 4 as requested.

Dated January 13, 1936.

RALPH B. EVANS,
Attorney for Bethlehem Shipbuilding Corporation, Ltd.

EXCEPTIONS OF THE UNITED STATES OF AMERICA AND THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION TO THE REPORT OF THE SPECIAL MASTER AND REFEREE FILED FEBRUARY 7, 1936.

(Filed Feb. 25, 1936)

And now, this 25th day of February, 1936, come The United States of America and The United States Shipping Board Emergency Fleet Corporation and except to the Report of the Special Master and Referee filed on February 7, 1936, in the following particulars, to wit:

1. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 92.

2. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 93.

3. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 94. The statement of the Special Master and Referee that "The proposals were not confined to all materials at then existing prices," has no bearing upon the Request.

4. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 95.

5. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 96.

6. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 104.

7. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 105.

8. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 106.

9. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 107.

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13. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 112.

14. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 114.

15. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 116.

16. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 117.

17. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 121.

18. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 122.

19. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 125.

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31. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 140.

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68. To the failure of the Special Master and Referee to unqualifiedly affirm their Request for Finding of Fact No. 240.

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122. To the statement of the Special Master and Referee that "The Master finds that the chart was prepared by Harry Brown as an evidence of his best guess as to costs and without fraudulent intent" (Rep. p. 14).

123. To the statement of the Special Master and Referee that "Little more is needed than a reading of the testimony of Radford, who is the Government's witness, to impel the conclusion that the charge of fraud made by the Government against Bethlehem is without foundation" (Rep. p. 15).

124. To the statement of the Special Master and Referee that "At the time these contracts were entered into, insofar as the evidence before the Master shows, Piez, Admiral Bowles, Radford and Cox had knowledge, or information available, from which knowledge could have been obtained, whereby to judge of the reasonableness, under all of the circumstances, of the estimated base price for the contract ships" (Rep. p. 22).

125. To the statement of the Special Master and Referee that "The Government has not produced a word of testimony to prove that, had the Government representatives known exactly what the profit to Bethlehem under the contracts dated December 31, 1917 eventually would be, the contracts in question would not have been made because they could produce such profit. . . The Master must assume that, as the burden was upon the Government to prove this to be the fact in its attack upon the profits from the contracts, the failure of the Government

to develop such evidence from Piez, Radford, Cox or Cuthell justifies the inference that had the effort been made the testimony would have proved the contrary, and that the Government's witnesses, if asked, would have testified that regardless of the profit, as the contracts represented the best price obtainable from Bethlehem for the building of the ships, the contracts would have been entered into" (Rep. p. 22).

126. To the statement of the Special Master and Referee that "The evidence shows, and the Master finds, that the Fleet Corporation made the contracts with open eyes; although resenting the commercial attitude of Bethlehem and condemning Bethlehem for demanding its 'pound of flesh', and did so because of a realization of the necessity of attaining an objective with the shipbuilding program which, without Bethlehem, might not be possible" (Rep. p. 23).

127. To the statement of the Special Master and Referee that "It is to be remembered, however, that Bethlehem was an old line shipbuilding company, carrying the burdens of idle invested capital over long time periods, the maintenance of an experienced and expensive organization, which, during periods of inactivity in the shipbuilding industry, probably was not productive of overhead, such as maintenance, taxes and other carrying charges. All of these, however, were charges incident to the standby service rendered by Bethlehem, to enable it to perform active service when the needs of the Government might require it. It may well be, as Bethlehem contends, that these factors must have been taken into consideration by the representatives

of the Fleet Corporation in their determination that, regardless of the opportunity which the contracts would afford Bethlehem for substantial profits, it was worth the extra cost, if any, to the Government to place the contracts with an old line company and to insure the continuous service of Bethlehem so long as the war needs might call for it" (Rep. pp. 23-4).

128. To the statement of the Special Master and Referee that "The profits afforded to Bethlehem from these shipbuilding contracts are in large measure to be paid, of course, by Bethlehem's fellow taxpayers who supply the funds, Bethlehem contributing, no doubt, most of its 'bonus for savings' as originally anticipated by Powell (pp. 779-784). But, after all, without Bethlehem the World War might have lasted many months longer and the burdens upon these same taxpayers might thereby have been enormously increased" (Rep. p. 24).

129. To the statement of the Special Master and Referee that "It is fair to assume, even without reference to Exhibit B-6, that prior to the Armistice information had been acquired by the Fleet Corporation concerning actual cost of the construction work on the contract ships by reason of the current audits for the Fleet Corporation of the Bethlehem contract work, from which a comparison with the estimated base cost could readily have been made" (Rep. p. 24).

130. To the statement of the Special Master and Referee that "This power of cancellation was one of the reasons which induced Radford to accept the estimates in spite of his belief that the speculative chances for profit under the war conditions were

more favorable to Bethlehem than against it (Radford, R. 1002)'' (Rep. p. 25).

131. To the statement of the Special Master and Referee that ''The foregoing is interesting in that it shows that, in peace times, the Government contracts produced a greater profit to the shipbuilders than the war time contracts of Bethlehem here complained of. It also shows variations between estimates of ship costs and actual costs similar to those testified to by the witnesses as frequent in the industry (pp. 668-669)'' (Rep. p. 32).

132. To the statement of the Special Master and Referee that ''The evidence shows, and the Master finds, that as to the later contracts the representatives of the Fleet Corporation had opportunity, which they took advantage of, to determine whether the 'base cost' of Bethlehem would produce a higher net cost to the Government than those contracts of other shipbuilders, and that as a result of deliberate judgment they fixed the 'base cost' of all of these contracts at what was believed to be as fair and reasonable as could be estimated under all of the existing circumstances (see G. 134, Doc. 391)'' (Rep. pp. 34-35).

133. To the statement of the Special Master and Referee that ''The evidence also disclosed that the 'educated guess' of Powell and Brown as to the 'base cost' for the contracts of December 31, 1917, produced a still less cost to the Government of ships built under these contracts than under the lump sum or cost plus contracts with other shipbuilders'' (Rep. p. 35).

134. To the statement of the Special Master and Referee that ''The Master, for the reasons stated,

finds that the charge against Bethlehem of fraud in the making of the contracts under consideration is without foundation upon this record, and that these contracts are valid, enforceable obligations, according to their terms, against the Fleet Corporation" (Rep. p. 36).

135. To the statement of the Special Master and Referee in the supplement to his report that "The testimony in the record justifies the conclusion that with or without adjustment, to reflect the difference in specifications, the cost to the Government of the vessels built under the Bethlehem contracts was less, for the value received, than the cost under contracts with other shipbuilders" (Sup. to Rep. p. 48).

136. To the dismissal by the Special Master and Referee of each and every of the exceptions filed by the United States of America and the United States Shipping Board Emergency Fleet Corporation to the report of the Special Master and Referee (Rep. p. 48).

CHARLES D. MCAVOY,
United States Attorney for the Eastern District of Pennsylvania.

JOSEPH J. BROWN,
Special Assistant to the Attorney General.
SOUTH TRIMBLE, JR.,
Solicitor, Department of Commerce.
RALPH H. HALLETT,
Assistant Counsel, United States Shipping Board Emergency Fleet Corporation.

OPINION SUR EXCEPTIONS TO REPORT OF SPECIAL MASTER, &c.

(Filed June 3, 1938)

Dickinson, J.

There will be no charge made of undue haste in the disposition of these cases. The contract with which they concern themselves was signed in 1918. The Bill in Equity was filed to March Term 1925 and the actions at law are entitled as of December Term, 1925.

The Master was appointed in 1931, and made his report, in the sense of having prepared it, February 19th, 1932, but withheld it at the request of the United States and agreement of the Steel Company, until the filing date of February 7th, 1936.

The cause was not set down for hearing upon the Exceptions until May 16th, 1938. It is the duty of the Master to state that no part of this "lapse of time" is chargeable to him but has been to him "a matter of regret and concern".

There are two cases before us, the other actions brought having been disposed of. Of the remaining cases one is a Bill in Equity and the other an action at Law. The litigation began with the filing of the Bill. This was one to compel the defendant to disgorge averred unconscionable profits which it had received on a contract for the building of ships by the defendant for the United States Merchant Marine. This was promptly followed by the action at law in which the plaintiff seeks to recover from the

Shipping Board Corporation a claimed unpaid balance due it for performance of the same contract. Each controversy is thus over the same contract and the proceeding and action may be discussed as one claim and defense. The threatened length of the inquiry induced the parties to agree upon a procedural arrangement to shorten it so far as possible. This was to have the proceeding in Equity referred to a Special Master and for the parties to the action at law to waive a jury trial and refer the cause to a Referee under the Pennsylvania practice—the same person to act as Special Master and also as Referee.

The then Owen J. Roberts, Esq., (now Mr. Justice Roberts of the Supreme Court) was appointed by the Court as Special Master and agreed upon as Referee. Upon the retirement of Mr. Roberts, William Clarke Mason, Esq., succeeded him, and it is his report which is before the Court with exceptions. He will be referred to as Special Master. 379 Requests for Findings of Fact and Conclusions of Law were submitted to the Master and answered by him. The Exceptions to his report number 153. A detailed discussion of all the points thus raised is impracticable within the limits of a judicial opinion nor is it necessary. The various contentions of the parties may be grouped and formulated in a few general questions.

The complaint and defense of the United States may be voiced in the statement that the contract in question called for the construction of 66 ships constructed at a total cost price of about $122,000,000.00 from which the contractor has received a profit of nearly $20,000,000.00 and is claiming the legal right to over $5,000,000.00 more, in addition to whatever

profits its subsidiaries may have made on the supply of materials to the contractor. This (without the latter if any) makes up the portentous total of about $25,000,000.00. Even the part of it which the contractor has received is characterized by the United States as exorbitant, unconscionable and as the fruit of fraud, because of which the United States, as a defrauded party, is seeking to have restored to it the unjust sums exacted.

The answer and demand of the contractor is that it has asked and is asking for no more than the moneys due it under the contract entered into by the parties and that so far from what it has received being excessive that there is still an unpaid balance due it for the payment of which the action in assumpsit has been instituted. This brings the question before the Master and this Court to that of to how much has the contractor a right under the dealings and contract between the parties? It must be borne in mind that we are concerned with the legal justice of the cause and cannot, except so far as the law directs, give weight to other considerations.

Among the horrors of war a not inconsiderable one is the way and extent to which Army contractors profit by the needs of government. It may be that this in case of most contracts is necessarily true. Prices at such times are upset. Someone must take a real and great risk and a contractor cannot be expected to take it. It is proverbial that war profits from Government contracts are far beyond what in peace time would be deemed fair and reasonable.

It is pointed out by the United States that, in the instant case, the contractor had no reason to bar-

gain for large profits to off-set a risk of loss because this contractor under this contract took no risk whatever. The exaction of inordinate profits is thus viewed by the United States as an advantage taken of the pressing needs of the Government. As war time is to other citizens a time of sacrifice, it seems unholy and sinful to make of the calamity of the people a source of inordinate gain. As before stated, however, we are dealing with a matter of contract and not sentiment, patriotic or otherwise.

There have come into use three types of Government war time contracts, each designed for the protection of the Government, but each proving to be to the advantage of the contractor. Perhaps the only remedy—aside from refraining from war—is to bear with the evil as uncontrollable. One is the flat sum price of peace time contracts. The risk of higher prices is always assumed by the Government, and if the higher prices are not paid by the contractor, they go into his profits. Another is the cost plus price. Theoretically this is just to both contractor and Government. In practice it however very much inflames the cost of performance of the contract and the general judgment pronounces it to fail of its purposes. A third is that made here, which is a cost plus contract with the added feature of giving to the contractor an inducement to hold down the cost to the lowest figure by giving him a percentage of any saving effected. The success of this type of contract in benefiting the Government depends upon the estimate of what the cost of construction should be. The United States avers that the contractor here fraudulently made this estimate so high as to make this part of the profit to the contractor, inordinate.

The United States stands upon three propositions: One turns upon the interpretation given to the contract; the second upon a fact finding, and the third upon a conclusion of law. These three propositions are:

1. The percentage of saving which the contractor is to receive is not based upon the difference between the estimated cost and the actual cost but upon that part of this difference which was due to the services rendered by the contractor.

It is not altogether clear whether the United States is relying upon this as a construction of the contract as made or whether upon the doctrine of unconscionable contracts, invoked in the third position of the Government, later discussed. As a method of treatment we limit it at present to the proper interpretation of the contract. It need only to be said that the Master has not so construed the contract, and we are constrained by its wording to agree with the Master. The contract gives to the contractor, one-half of the difference between the estimated cost and the actual cost of the ships. The Government's criticism of the contract is based upon this interpretation of its meaning.

2. The estimated cost of construction, inserted in the contract as one basis for the determination of the bonus profit to the contractor, was fraudulently overstated by the contractor so as to make this part of the contractor's profits, inordinately large and exorbitant.

This is a charge of actual fraud perpetuated by deception. The Master has found against this charge of actual fraud and under all the evidence he

could not have found otherwise. The managers for the contractor adopted the famous Rob Roy distinction who admitted he was a robber but proudly proclaimed that he was no thief. The contractor boldly and openly fixed the figures in the estimated cost so high as to give them the promise of large bonus profits. The managers for the Fleet Corporation knew that the estimate was high and why it was made high and so protested it. The reply of the contractor's managers was "we will take the contract with this promise of bonus profits incorporated in it but not otherwise. You take it or leave it". Whatever wrong there was in this, may have been the wrong in a daylight robbery but there was no element of deception in it.

3. The contract, although without any element of fraudulent deception in its making, in its performance results in profits to the contractor, so inordinately large as to be extortionate and to render the contract unconscionable and thus unenforceable in Equity or at Law.

This is the real cause of action set up in the Bill and the real defense interposed to the action at law. As viewed by the Government these profits are so large "that no one short of lunacy would agree to pay them and no honest man would accept them". The analogue is the enforcement of the contract of a drowning man to give an inordinately large reward to one who can without risk and with little trouble rescue him.

This presents the subject of the obligation of contracts and enforcement. This obligation has always been regarded as the very corner stone of the fabric of civilization. The whole business commercial

structure is built upon it. It may well be thought that of late years we have gone quite far enough toward abolishing the obligation of debt. There had always been however a limit to the binding force of a contract or at least the extent to which the law will go in enforcing it and this is the limitation which the United States invokes. When the results and consequences of the enforcement of a contract are such as to stagger our sense of what is just and fair, this alone may be deemed evidence of hidden fraud. Resort is had to various expedients to in effect avoid the contract. One is to a strict interpretation of the contract. The obligee may have his pound of flesh but not a little more or less and not a drop of blood. Sometimes a quantum meruit is substituted for that for which the contract calls. Sometimes a limit imposed by the arbitrary power of the law is placed upon what the obligee may exact, as in the case of our usury laws. Sometimes what is called a "policy of the law" is interposed to the enforcement of a particular contract. The law is powerless, in every case of contract, to prevent the unscrupulous from taking advantage of the unwary. All it can do is to weigh the need to observe and enforce the obligation of debt against the injustice and unfairness resulting from a particular contract. It cannot rewrite the contract between the parties. What really happens is this. The claimant has his contract but cannot enforce it without the aid of the Law. The Law simply refuses its aid to an unconscionable contract.

Applying these generalities to the case before us there is presented the thought that the Government views this question as one affecting sovereignty. The sovereign needs no help from the Courts. It

cannot be sued nor can a judgment against it be enforced without its consent. There would be nothing staggering in the proposition that the sovereign might interpose a quantum meruit limitation to any demand made upon him. This contract however was not made with the United States but with the Fleet Corporation. This Court ruled (per Thompson, J.) that the Fleet Corporation was a corporation, and that the legal consequences of this fact were not affected by the circumstance that the United States was an owner of its stock or indeed its sole owner. The United States Supreme Court has since so ruled.

> United States vs. McCarl, 275 U. S., 1,
> Fleet Corporation vs. Harwood, 281 U. S., 519.

We are in consequence dealing with a contract made between private parties. In viewing the "unconscionable profits" phase of it, there is this to be said. The motive for the insertion of the bonus feature is obvious. Unless the promise was of substantial profits, the incentive to keep down the cost would be lacking. Consequently it was made one-half of the total savings. It is doubtless true that there is no way of curbing "army contract" profits in time of war. What the Government is to be protected from is the higher war time cost. The direct way of measuring this is by the contrast of the actual war time cost with an estimate of what the peace-time cost would have been. There would be many ways of checking up on this but such a contract would be difficult to frame. The bonus in this contract was measured by the contract of an estimated war time cost with the actual cost. There is no way

of checking up on such an estimate. It is almost altogether a guess. The only check would be to limit the maximum savings profit payable. The contractor here bluntly refused to enter into a contract with such a limitation. The strongest position for the Government to take is that an agreement to pay a savings bonus is an agreement to pay something for nothing.

The cost plus agreement here made was really a hiring of the contractor's equipment and organization on a ten per cent. commission basis. The contractor was really an employee of the Fleet Corporation. As such employee it was bound to render due service in keeping down the cost of construction to its employer. The exaction of a bonus for doing what it was the contractual duty of the employee to do and what it was otherwise paid for doing, partakes of the nature of a racket. We are here applying the test of what is unconscionable. There is a recognized margin however between the service which an employee is in duty bound to render and that which he is capable of rendering. It is common practice to call forth this reserve energy of employees by offering the inducement of extra pay or a bonus for increased service by which the employer benefits. It is likewise common to measure the value of this extra service by results. A bonus given for time construction is an illustration. Such agreements may be based upon a wrong principle but in view of a general and common practice they could not be condemned as unconscionable. For one party to a contract to take advantage of the ignorance or necessities of another may well be condemned as ethically wrong. Taking candy from a child is the acme of meanness. When a party should be relieved

of the obligation of a contract because the other party to it has reaped an unexpected or undue profit, is to be determined by the circumstances of each individual case.

The Master has given to the consideration of this case painstaking care. He has supported his conclusions by reasons set forth in a Report of gratifying clarity and bearing every evidence of considerate judgment. We accept his conclusions as sound and adopt them.

This disposes of all the questions raised by the exceptions to this voluminous Report except those which relate to the question of the allowance of interest. The United States excepts to the allowance of any interest and the Steel Company to the allowance made as inadequate. We have been unable to find these specific exceptions other than 3 and 4 of the Steel Company. The Question was however argued before us and we will assume that it is raised by appropriate exceptions. The question of interest allowance is commonly treated in the reported cases in a more or less perfunctory way. There seems to be a disposition to treat it as a matter of course by allowing interest. Controversy is commonly over the rate of allowance. Interest is however a matter of contract, express or implied, or is an element in the assessment of damages. Here the contract was to pay a sum of money based upon a percentage of savings in the cost of the construction of these ships. There was no agreement to pay interest. The interest doctrine of the law of Pennsylvania in damage cases has been well stated by the Master. In tort cases it is not allowed qua interest but is allowable as an element in the assessment of the damages

suffered by the plaintiff. The rate of allowance is not controlled by the usury Statutes except that what is commonly called the lawful rate cannot be exceeded. The reason for this limitation is obvious. In breach of contract cases what is really the like rule applies. Damages for the breach must be assessed. Deferred payment is an element.

We have in mind numerous cases, many of which have been cited to us, which rest upon a fiction. The fiction is that the damages became payable on the breach and there was then an implied promise to pay at once or to pay interest on deferred payments. Here there is no room for an implied promise. The promise was express to pay this bonus based upon a percentage of savings. Payment was not due until the saving was determined. This means here that the sum due does not bear interest until ascertained and hence not until judgment recovered. This in theory is no hardship to the contractor. He may press his claim promptly to judgment. He cannot turn it into an investment bearing, as is claimed here, six per cent. interest, thereby doubling the final payment to be made.

The Master was fully justified in assessing the damages, in considering the interest item at a two per cent. rate. By the same token he might have excluded it altogether, which we think he should have done. There is in the allowance of interest something in the nature of a penalty for delayed payment. We do not think any such penalty was incurred here.

It has been urged upon us that no interest should be allowed because interest is not recoverable against the United States. We refuse to so hold but are in accord with the finding of the Master that the

judgment to be entered is one against the Fleet Corporation.

To give definiteness of date to the decree and judgment to be entered none is now entered but leave is granted to enter a formal decree and judgment in accordance with this opinion and the conclusions stated below.

1. The Bill in Equity should be dismissed for want of Equity and the Cross-Bill for the additional reason of want of jurisdiction.

2. Judgment should be entered in the action at Law of the Bethlehem Shipbuilding Corporation, Ltd. for the sum found by the Master without interest.

3. The other actions at law should be disposed of in accordance with the stipulations of the parties.

4. The Exceptions filed to the Report of the Master should be dismissed except the exception, if any, to the interest allowance which should be sustained.

5. As thus modified, if there is such exception, the Report of the Master should be approved and confirmed.

OPINION SUR RULE TO AMEND CAPTION OF CASE.

(Filed June 27, 1938)
Argued June 27th, 1938.

Dickinson, *J.* June 27th, 1938.

After the above action was brought Congress changed the name of the defendant from "United Shipping Board Emergency Fleet Corporation" to "United States Shipping Board Merchant Fleet Corporation". The plaintiff has accordingly entered the pending rule to change the name of the defendant from the old name to the new. We see in this nothing more than a formality to have the name of the defendant of record conform to its name in fact. The very competent counsel for the United States opposes the motion because the effect of it will be something more than a mere change in name. We are getting somewhat outside of the record in stating that we do not see that this change of name will in any way affect the merits of the cause. The plain truth is that the defendant is nothing more than a name. It has no assets and a judgment against it would be in practical effect a nullity. The only value a judgment has is that it may be an inducement to or reason for Congress appropriating the money to pay the judgment. It has, so far as we have been able to discover, no other value. It further seems that the corporation defendant whether by one name or the other has in fact been dissolved. This means that the action is against a ghost but even a ghost may have a name.

A formal order is submitted herewith.

ORDER

(Filed June 27, 1938)

And now, this 27th day of June, 1938, upon argument and due consideration of the plaintiff's motion and rule upon defendant to show cause why title to the above action should not be amended, entered June 20, 1938, it is ordered that the title to this action be so amended as to name the defendant by the name to which its former name as shown above was changed by Act of Congress approved February 11, 1927, Ch. 104, Sec. 1, 44 Stat. 1083, to-wit, United States Shipping Board Merchant Fleet Corporation, so that the title to this action as so amended shall be

Bethlehem Shipbuilding Corporation, Ltd.,
Plaintiff

against

United States Shipping Board Merchant Fleet Corporation
Defendant.

By the Court:

(signed) DICKINSON
J.

APPEARANCE OF ATTORNEYS FOR PLAINTIFF

(Filed June 28, 1938)

Enter our appearance for Bethlehem Shipbuilding Corporation, Ltd., plaintiff in the above case.

EVANS, BAYARD & FRICK

by RICHARDSON DILWORTH
Attorney for said plaintiff

June 28, 1938

To Clerk U. S. District Court

APPEARANCE OF ATTORNEY FOR PLAINTIFF

(Filed Aug. 22, 1938)

To the Clerk of the Court:

Enter my appearance for the plaintiff in the above entitled matter.

RICHARDSON DILWORTH
RICHARDSON DILWORTH (sgd.)
Attorney for plaintiff

2635 Fidelity-Phila. Trust Bldg.

OPINION SUR PRAECIPE FOR JUDGMENT

(Filed Sept. 23, 1938)

Argued June 30th, 1938

Dickinson *J.* September 22d, 1938.

Leave was granted the parties to file Briefs, which are now before us.

The question raised is a very narrow one. The action was referred under the provisions of the Pennsylvania Referees Act of 1874. The Referee found a sum to be due the plaintiff to which he added interest at the rate of two per cent per annum. The Court, on exceptions to the Report of the Referee, approved the finding of the principal sum but was of the opinion that no interest should be included in the judgment to be entered. There were in all some 200 exceptions. The plaintiff has excepted to the refusal of the Referee to allow interest at the rate of six per cent, but we found no formal exception otherwise to the allowance of two per cent. The question of the propriety of the allowance of interest was however pressed and fully argued. The Court, being uncertain in the multitude of exceptions what was included, sustained the exception to the allowance of interest "if any" and authorized judgment to be entered for the principal sum without interest. As the question now raised had not been discussed, no judgment was entered but leave was given to move for judgment. Plaintiff now moves for judgment for the principal sum, with two per cent, interest, on the ground that no exception having been

taken to the allowance of interest by the Referee, the judgment entered must follow his findings.

DISCUSSION

The question as thus presented is what we have called the very narrow one of the existence of such an exception, but underlying it are several broader questions.

1. There is included in it the question of whether the cause is to be determined in accordance with the law of Pennsylvania or what have been called "principles of general law". The Constitution confers upon the Courts of the United States the judicial power to determine causes in a limited field. It restricts itself to the mere grant of power and is silent on the subject of the conduct of the trial of cases. It may determine controversies to which the United States is a party and those between citizens of different States. In the latter case it has been finally determined in the recent case of Erie Railroad vs. Tompkins, 58 Dup. Ct. Rep., 817, that the cause is to be tried as to substantive law as it would be tried in the State Court, and the Conformity Statute provides the procedural features shall conform to the State Practice as nearly as may be. This means that the law of the case is to be determined in accordance with the law of Pennsylvania.

2. The question thus becomes what is the law of Pennsylvania on the subject? There is on the part of the legal profession a looseness of discussion of the question of the control which an Appellate Court has of the findings of a subordinate tribunal. Rulings are cited indifferent to whether made in the case of

the Report of a Special Master in Equity; the verdict of a jury; the rulings of a fact finding Commission, or, as here, that of a special tribunal upon which the power to determine a cause has been conferred. The confusion is due to the circumstance that they all have in common the rule that the reviewing Court is predisposed to accept the findings of the lower Court. There are however fundamental differences. A Master in Equity, for illustration, is but an aid to the Court of his appointment and his Report one of recommendation. A jury, on the other hand, is the tribunal to which the determination of a cause is submitted. Its findings are placed beyond the control of the Courts except as such control is regulated by law. The findings of a Referee under the Pennsylvania practice are very much akin to the verdict of a jury. Judgment follows his Report unless exception is taken thereto. The Court otherwise has no control over his findings. This strong vantage ground must be conceded the plaintiff in the instant case.

3. The question before us is thus reduced to the narrow one of whether the allowance of interest was made the subject of an exception. There is no specific exception to the allowance of interest. There is however an exception to the award of judgment, including interest. We could not dismiss this exception without allowing the interest to which we have found the plaintiff has no right. We are in consequence justified in sustaining this exception in part by disallowing interest.

The conclusion reached is that the motion for judgment, including interest, should be denied, but judgment may be entered for the principal sum found by the Referee, with costs.

MEMORANDUM OPINION SUR MOTION FOR DECREE

(Filed Dec. 23, 1938)

Dickinson, J.

The years which have elapsed since this proceeding was instituted and the greater number of years since its subject matter has been in controversy loudly proclaim it is high time the litigation should be brought to an end.

There are two cases growing out of the same transaction, which were tried together. One is the above entitled case in Equity; the other an action at Law. For the convenience of the parties the Equity proceeding was referred to a Special Master and the action at law tried by a Referee under the Pennsylvania Statute of 1874 and its amendment of 1889. Wm. Clarke Mason, Esq. acted as Special Master and also as Referee.

We will discuss the questions raised as if there were but one case and this opinion may be marked as filed in each. The Master and Referee made the required Findings of Fact and formulated his Conclusions of Law thereon. Exceptions were filed to the Report of the Master and of the Referee. These exceptions were all dismissed except one. The learned Referee gave judgment against the defendant in the action at law for the sum he found to be due, with interest at two per cent. The Court sustained the exception to the allowance of interest.

The conclusions reached by the Court were that the Bill in Equity should be dismissed and judgment should be entered against the defendant in the action at law for the sum found by the Master without the inclusion of any interest but with costs. Nothing remained to be done but to enter a formal decree in the Equity proceeding and a formal judgment in the action at law. Moving for these was not the allowance of a re-argument. Counsel for the United States has, however, submitted a full and considered Brief on the question of what the decree and judgment should be. This we have been earnestly urged to consider and out of deference to this request have done so. The form in the decree in the Equity suit follows of course the established practice in Equity but as modified, we suppose, by the New Procedure Rules. The action at law having been submitted to a Referee under the State Act, the procedure there should be in accord with the State practice, as also so modified.

The intended results could be reached by a simple decree dismissing the Bill and the entry of a judgment in the action at law for the found sum, with costs, the judgment to carry interest from the date of its entry. The only question, so far as we can discover, is whether the decree in the Equity case should include Findings of Fact and Conclusions of Law and the judgment in the law case do the same, in accordance with the New Procedure Rule No. 52. That Rule is almost a copy of Equity Rule 70-½. The latter Rule has never been held, and for obvious reasons, to apply to exceptions to a Master's Report nor to the formal decree entered. Indeed the practice in the latter case would conflict with Equity Rule 71. If, however, the Rule is held to apply the

very Rule provides that "the findings of a Master, to the extent that the Court adopts them, shall be considered as the findings of the Court." There is no need to apply Rule 52 to a review of the findings of a Referee when he has complied with the Rule. The State practice has not been uniform on the subject of incorporating Findings in the disposition made of the report of the Referee. They may in consequence be incorporated. If Rule 52 is held to apply to Referee cases then the findings of the Referee by the express terms of the Rule are incorporated.

With many of the propositions of the Brief submitted, we are in accord. The United States without its consent cannot be subjected to the payment of costs. Undoubtedly a Court of Equity may determine the payment of costs. Ordinarily they follow the decree entered but may not. We refuse, however, to impose them, or any part of them, upon the Bethlehem Company. Asking us to do so is to ask for a re-hearing. The Master's and Referee's fees are undoubtedly costs. With us costs are taxed by the Clerk. Fees, however, are fixed by the Court, not by the Clerk. It is accordingly the practice for the Court to fix them and the Clerk taxes them at the sum fixed. The Court in actions at law has no control over the costs. They follow the judgment which carries costs. The Pennsylvania Act fixes the fees of Referees on a per diem basis. The parties however, with the consent of the Referee, have agreed that on the per diem basis the compensation of the Referee is the sum of $15,540.00, and it is so fixed. The Referee ruled that the action at law was not against the United States but a corporation. The Court agreed. To now contend

otherwise is to turn the motion for judgment into a re-argument. The contract between the corporations plaintiff and defendant is governed by the law of contracts of the State. The liability to costs is determined by the law of the State. This Court has no lawful power to substitute its judgment of what the law should be for what the State law is. We cannot in our discretion change that law.

The conclusions are:

1. The decree in the Equity case should be one of a simple dismissal of the Bill.

2. The judgment in the action at law may be a judgment in favor of the plaintiff for $5,272,075.10, with costs of suit and fixing the compensation of the Referee at $15,540.00 as agreed to by the parties.

3. A form of judgment in the action at law is submitted herewith as the final judgment entered.

EXCEPTIONS OF THE PLAINTIFF BETHLEHEM SHIPBUILDING CORPORATION, LTD. TO THE RULINGS AND DECISION OF THE COURT.

(Filed Dec. 27, 1938)

The above-named plaintiff, Bethlehem Shipbuilding Corporation, Ltd., excepts to the rulings of the Court on exceptions of the plaintiff to the rulings, findings and conclusions of the Referee appointed to hear and determine the issues in the above-entitled action and report his findings of fact and conclusions of law to the Court, and to the confirmation and adoption by the Court of rulings, findings and conclusions of said Referee, as follows:

1. To the overruling and dismissal by the Court of the plaintiff's exception to, and the confirmation and adoption by the Court of, the finding of the Referee that the order of December 8, 1917, referred to in the report of the Referee under the heading "As to the West Coast Contracts" was an order of the Wage Adjustment Board, on the ground that such finding is contrary to the admissions of the parties to this action contained in the stipulation introduced before said Referee and known as Exhibit A, and that there is no evidence to sustain such finding.

2. To the overruling and dismissal by the Court of the plaintiff's exception to, and the confirmation and adoption by the Court of, the finding, opinion or conclusion of the Referee in that part of said report under said heading "as to the West Coast

Contracts" that "The wage schedule applicable to the West Coast Contracts, as the schedule in effect on January 3, 1918, included the ten per cent war service bonus theretofore made effective in the West Coast yards."

3. To the overruling and dismissal by the court of the plaintiff's exception to, and the confirmation and adoption by the Court of, the conclusion stated in said report that an allowance of interest on the amount found due to the plaintiff to be computed at six per cent per annum would not be justified.

4. To the overruling and dismissal by the Court of the plaintiff's exception to the recommendation contained in said report that interest be allowed upon the several items found due to the plaintiff from the due date for the payment thereof as set forth in said report at a rate per annum less than the legal rate of six per cent.

5. To the overruling and dismissal by the Court of the plaintiff's exception to, and the confirmation and adoption by the Court of, the denial by the Referee of the conclusion of law No. 2 requested by the plaintiff, that the wage schedule referred to in the West coast contracts is the schedule promulgated by the Shipbuilding Labor Adjustment Board on November 4, 1917, exclusive of the War Service payment of ten per cent authorized by the Fleet Corporation on December 10, 1917.

6. To the overruling and dismissal by the Court of the plaintiff's exception to, and the confirmation and adoption by the Court of, the failure and refusal of the Referee to find or affirm so much of the conclusion of law No. 4 requested by the plain-

tiff as is to the effect that judgment should be entered herein against the defendant for the amount found to be owing, together with interest.

The plaintiff further excepts to rulings and decisions of the Court as follows:

7. To the failure and refusal of the Court to hold and decide that the amount due to the plaintiff from the defendant on account of vessels completed under direct contracts is the sum of $5,286,583.25, which is shown in Exhibit A attached to the report of the Referee as the amount stipulated by the parties to be due on the basis of the plaintiff's contentions concerning the Wage Schedules referred to, respectively, in Article XIX of each of the West Coast contracts (denominated "Bethlehem's contention (a)") and in Article XIX of each of the East Coast contracts (denominated "Bethlehem's contention (d)"), instead of the sum of $4,871,375.21 on account of such completed vessels found due by the Referee, the difference between said sums, to wit $415,208.04, being the amount on account of savings in the cost of vessels completed under said West Coast contracts which the Referee failed to find due to the plaintiff in consequence of the Referee's erroneous construction of said Article XIX of each of said West Coast contracts.

8. To the finding of the Court that the exception of the defendant to the award of judgment, constituted, and had the force and effect of an exception to the Referee's allowance of interest upon the award.

9. To the ruling and decision of the Court that the plaintiff is not entitled to interest on the sev-

eral items found due from the defendant to the plaintiff from the due date for the payment thereof as set forth in the report of the Referee.

10. To the failure and refusal of the Court to direct that the amount for which judgment shall be entered herein shall include interest at the rate of six per cent per annum on the several items found due from the defendant to the plaintiff from the due date for the payment thereof as set forth in the report of the Referee.

Dated, December , 1938

EVANS, BAYARD & FRICK,

RICHARDSON DILWORTH,
Attorneys for Bethlehem Shipbuilding Corporation, Ltd.

ORDER ALLOWING EXCEPTIONS

And now, December 22nd, 1938, the above exceptions are allowed.

(s) O. B. DICKINSON,
J.

JUDGMENT

(Filed December 23, 1938)

And now, December 16th, 1938, a jury trial having been waived and this case referred to a Referee under the provisions of the Pennsylvania Act of May 14th, 1874 as amended, the Referee having filed his Report, and argument having been heard on exceptions to said Report:

It is ordered and determined that the several exceptions taken and filed by the respective parties to the report of the Referee and to his rulings on requests for findings and conclusions be and they hereby are overruled, and the several rulings, decisions, findings and conclusions of law of the Referee as stated and contained in said report and in the appendix thereto containing the rulings of the Referee on requests for findings and conclusions be and they hereby are confirmed and adopted by the Court and made respectively, the rulings, decisions, findings of fact and conclusions of the Court in this action; except that the Court having ruled that the exception filed by the defendant to the Referee's allowance of interest on the amount found due to the plaintiff should be sustained and no interest be included in the judgment.

It is further ordered that judgment be and hereby is entered in favor of the plaintiff and against the defendant for the sum of $5,272,075.10, and for the costs of this action, including the compensation of

the Referee herein, William Clarke Mason, Esquire, which compensation is hereby fixed and allowed at the sum of $15,540.00.

By the Court,

(s) DICKINSON, *J.*

IN THE DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Pennsylvania

No. 11970 December Term, 1925

Bethlehem Shipbuilding Corporation, Ltd.

vs.

United States Shipping Board Merchant Fleet Corporation

DOCKET ENTRIES

1938

Dec. 23, Judgment in favor of plaintiff in $5,272,075.10 together with costs including Master's fee, filed. 12/27/38 Noted and notice mailed.

Dec. 27, Exceptions by plaintiff to rulings of the Court and Order of Court allowing exceptions filed. 12/28/38 noted and notice mailed.

1939

Feb. 3, Plaintiff's bill of costs filed.

Feb. 14, Affidavit of service of notice of taxation of costs filed.

Feb. 14, Clerk's taxation of costs in $25.00 filed.

Mar. 10, Defendant's Notice of Appeal filed. 3-11-39 Copy to Richardson Dilworth Esq.

Mar. 10, Copy of Clerk's Notice of Appeal to U. S. Circuit Court of Appeals filed.

Mar. 20, Plaintiff's Notice of Appeal filed. 3-22-39 Copy to J. C. Ganey and copy to Bon Geaslin.

Mar. 20, Copy of Clerk's Notice of Appeal to U. S. Circuit Court of Appeals filed.

Mar. 20, Plaintiff's bond on Appeal in $250. with United States Guarantee Co., Surety, filed.

April 14, Order of Court extending time to file record on appeal to May 4, 1939 filed.

April 15, Plaintiff's statement for abridgement of exhibits filed.

April 15, Statement of Plaintiff-Appellant of points on which it intends to rely on its appeal filed.

April 15, Plaintiff's designation on appeal filed.

April 17, Affidavit of Service of Plaintiff's designation of record etc. filed.

April 24, Statement of Plaintiff-Appellant of Statement of points on which it intends to rely on its Appeal filed.

April 24, Order of Court directing transmittal of original papers and Exhibits to Court of Appeals filed. 4-25-39 noted, notice waived.

April 24, Stipulation of Counsel as to contents of record on appeal in lieu of cross designation by defendant-appellant filed.

DEFENDANT'S NOTICE OF APPEAL

(Filed March 10, 1939)

Notice is hereby given that United States Shipping Board Merchant Fleet Corporation, defendant in the above action, hereby appeals to the Circuit Court of Appeals for the Third Circuit from each and every part of the judgment filed in this action on December 23, 1938, except that no appeal is taken from that part of the judgment

(1) over-ruling the exceptions filed by Bethlehem Shipbuilding Corporation, Ltd., to the report of the Referee and to his rulings on requests for findings of fact and conclusions of law

(2) affirming without qualification the requests for findings of fact and conclusions of law submitted by The United States of America and the United States Shipping Board Emergency Fleet Corporation and contained in the appendix to the report of the Referee, and

(3) sustaining defendant's exception to the Referee's allowance of interest on the amount found due to the plaintiff and ruling that no interest be included in the judgment.

March , 1939

J. CULLEN GANEY,
United States Attorney for the Eastern District of Pennsylvania
Attorney for United States Shipping Board

Merchant Fleet Corporation.

Office and Post Office Address:

Second and Chestnut Streets,
Philadelphia, Pennsylvania.

BON GEASLIN,
General Counsel, United States Maritime Commission.
Attorney for United States Shipping Board Merchant Fleet Corporation.

Office and Post Office Address: Commerce Building, Washington, D. C.

PLAINTIFF'S NOTICE OF APPEAL

(Filed March 22, 1939)

Notice is hereby given that the plaintiff in the above-entitled action, Bethlehem Shipbuilding Corporation, Ltd., hereby appeals to the United States Circuit Court of Appeals for the Third Circuit from the final judgment in this action filed on December 23, 1938, and entered and noted in the Civil Docket on December 28, 1938, in so far as said judgment fails to include and award to the plaintiff, and in so far as the District Court has failed and refused to award to the plaintiff in said judgment, interest on the amount adjudged to be recovered by the plaintiff from the respective dates on which the various parts of said amount became due to the plaintiff.

Dated March , 1939.

RICHARDSON DILWORTH,
EVANS, BAYARD & FRICK,
By B. O. FRICK,
Attorney for Plaintiff.
123 South Broad Street,
Philadelphia, Pennsylvania.

To: Clerk of the United States District Court for the Eastern District of Pennsylvania.
J. CULLEN GANEY, ESQ.,
United States Attorney for the Eastern District of Pennsylvania,

Attorney for United States Shipping Board Merchant Fleet Corporation.
Second and Chestnut Streets,
Philadelphia, Pennsylvania.

Bon Geaslin, Esq.,
General Counsel, United States Maritime Commission,
Attorney for United States Shipping Board Merchant Fleet Corporation,
Commerce Building,
Washington, D. C.

STATEMENT OF PLAINTIFF - APPELLANT BETHLEHEM SHIPBUILDING CORPORATION, LTD., OF THE POINTS ON WHICH IT INTENDS TO RELY ON ITS APPEAL FROM THE JUDGMENT IN THE ABOVE-ENTITLED CAUSE

(Filed April 15, 1939)

Pursuant to Rule 75 (d) of the Federal Rules of Civil Procedure, the statement of the Plaintiff-Appellant Bethlehem Shipbuilding Corporation, Ltd., of the points on which it intends to rely on its appeal from the judgment in the above-entitled cause is as follows:

(1) The District Court erred in failing and refusing to include in the amount of the judgment awarded to the plaintiff against the defendant herein interest at the legal rate of interest on the amount adjudged to be recovered by the plaintiff from the respective dates on which the various parts of said amount became due to the plaintiff.

(2) The District Court erred in failing and refusing to include in the amount of the judgment awarded to the plaintiff against the defendant herein, interest at the rate of not less than two per cent. per annum on the amount adjudged to be recovered by the plaintiff from the respective dates on which the various parts of said amount became due to the plaintiff, the Special Master and Referee in his Report filed herein having found and recommended that the judgment in favor of the plaintiff herein

should include an allowance of interest at the rate of two per cent. per annum upon the amounts found in said Report to be due to the plaintiff and for the periods set forth in said Report and no exception to such finding and recommendation of the Referee having been taken or filed by the defendant or having been brought before the District Court for hearing or review.

Dated April 15, 1939.

RICHARDSON DILWORTH,
Attorney for Plaintiff-Appellant, Bethlehem Shipbuilding Corporation, Ltd.

STATEMENT OF PLAINTIFF - APPELLANT UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION OF THE POINTS ON WHICH IT INTENDS TO RELY ON ITS APPEAL FROM THE JUDGMENT IN THE ABOVE-ENTITLED CAUSE

(Filed April 24, 1939)

Pursuant to Rule 75(g) of the Federal Rules of Civil Procedure, the statement of the Plaintiff-Appellant, United States Shipping Board Merchant Fleet Corporation, of the points on which it intends to rely, on its appeal from the judgment filed December 23, 1938, in the above-entitled cause is as follows:

(1) The District Court erred in entering judgment in favor of the Plaintiff herein and against the Defendant herein in the sum of $5,272,075.10 and no judgment for any sum whatsoever should have been entered against Defendant.

(2) The District Court erred in entering judgment against the Defendant herein for the costs in the above-entitled Cause No. 11970 and judgment for no part of such costs should have been entered against Defendant herein.

(3) The District Court erred in entering judgment against the Defendant herein for the compensation of the Referee in the above-entitled cause, William Clarke Mason, Esq., in the sum of $15,540 and judgment for no part of said Referee's al-

lowance should have been entered against the Defendant herein.

(4) The District Court erred in not entering judgment for the full amount of costs and compensation of the Referee, William Clarke Mason, Esq., against the Plaintiff herein.

(5) The District Court erred in not entering judgment against the Plaintiff in the above-entitled cause in an amount as stipulated by counsel of $19,654,856.32.

(6) Without limitation of the foregoing paragraphs numbered 1 to 5 inclusive above, the contracts in controversy in the above-entitled Cause No. 11970 were entered into as a result of the fraudulent representations and actions of the Plaintiff herein.

(7) Without limitation of the foregoing paragraphs numbered 1 to 5 inclusive above, the contracts in controversy in the above-entitled Cause No. 11970 were entered into through constructive fraud on the part of the Plaintiff.

(8) Without limitation of the foregoing paragraphs numbered 1 to 5 inclusive above, the contracts in controversy in the above-entitled Cause No. 11970 were unconscionable and unenforceable.

(9) Without limitation of the foregoing paragraphs numbered 1 to 5 inclusive above, the contracts in controversy in the above-entitled Cause No. 11970 were entered into on the basis of a mistake of fact.

(10) Without limitation of the foregoing paragraphs numbered 1 to 5 inclusive above, the Plain-

tiff herein failed to prove that it saved material, increased efficiency, or did anything extraordinary or unusual resulting in a benefit to the Defendant herein which it was required to do under the contracts in controversy in order to recover profit under the half savings clause of the contracts in controversy.

(11) Without limitation of the foregoing paragraphs numbered 1 to 5 inclusive above, inasmuch as the evidence does not show that Plaintiff did anything under the half savings clause of the contracts in controversy in the above-entitled Cause No. 11970 which it was not required to do independently of that clause and particularly because Plaintiff herein failed to show any benefit accrued to the Defendant herein under the half savings clause, there was a failure of consideration for any payment under the half savings clause of the contracts in controversy.

(12) Without limitation of the foregoing paragraphs numbered 1 to 5 inclusive above, the contracts in controversy in the above-entitled Cause No. 11970 are against public policy and hence void.

(13) Without limitation of the foregoing paragraphs numbered 1 to 5 inclusive above, the representatives of Defendant had no power to enter into the contracts in controversy in the above-entitled Cause No. 11970.

(14) Without limitation of the foregoing paragraphs numbered 1 to 5 inclusive above, Defendant had no power to enter into the contracts in controversy in the above-entitled Cause No. 11970.

(15) Without limitation of the foregoing paragraphs numbered 1 to 5 inclusive above, costs in the above-entitled Cause No. 11970 and the fee of Wil-

liam Clarke Mason, Esq., as Referee in the above-entitled Cause No. 11970, constitute costs and/or expenses against the United States and as such are not properly taxed against Defendant.

(16) Without limitation of the foregoing paragraphs numbered 1 to 5 inclusive above, the taxing of the total amount of the Referee's fee in the above-entitled Cause No. 11970 was erroneous, and at least one-half of such Referee's fee should have been allotted as costs in the suit in Equity filed in the United States District Court for the Eastern District of Pennsylvania (No. 3315, 1925 term) by the United States of America v. Bethlehem Steel Corporation, Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Steel Company, Fore River Shipbuilding Corporation and Union Iron Works Company.

J. CULLEN GANEY,
BON GEASLIN,
Attorneys for Plaintiff-Appellant United States Shipping Board Merchant Fleet Corporation.

Dated, April 24, 1939.

STIPULATION OF CONTENTS OF THE RECORD ON APPEAL

(Filed April 24, 1939)

Inasmuch as the questions of law and fact sought to be raised for review by the Circuit Court of Appeals for the Third Circuit on the appeal of the defendant in the above entitled cause No. 11,970 and on the appeal of the complainant in the above entitled cause No. 3315 are substantially the same and the major portion of the papers and documents that will constitute the record on appeal in said respective causes are the same, the respective parties to said causes hereby consent that the record on said appeal of the defendant in said cause No. 11,970 and on the appeal of the complainant in said cause No. 3315 may be a combined record and hereby stipulate and agree pursuant to Rule 75(f) of the Federal Rules of Civil Procedure that such combined record shall, in addition to the exhibits ordered pursuant to Rule 75(i) of the Federal Rules of Civil Procedure to be sent to the Appellate Court in lieu of copies by order of the District Court filed April 24, 1939, consist of:

A. *The following papers and documents with respect to the above entitled cause No. 11970:*

1. The following part of the Statement of Claim in Assumpsit, and exhibits (all of the contracts in controversy except contracts Nos. 184 and 312, copies of which are annexed to the answer in cause No. 3315, the record in which is to be printed with

the record in this cause), attached thereto, filed * January 28, 1926:

(a) The front cover, showing the title of the action and notice to the defendant to file an affidavit of defense (the Index, pages i to iv, inclusive, is to be omitted).

(b) Pages 1 to 88, inclusive, and paragraph One Hundred Ninety-second on page 89, (thus including causes of action First to Sixteenth, inclusive); paragraphs Two Hundred Sixth to Two Hundred Eleventh, inclusive, on pages 94 to 96, (thus including causes of action Nineteenth and Twentieth), together with the heading of each of the last mentioned causes of action; and paragraph Two Hundred and Ninety-seventh, together with the names of the attorney and counsel for the plaintiff and the verification.

(c) Exhibits 1-A, 2-A, 3 to 16, inclusive, and 19 (all other exhibits attached to the Statement of Claim are to be omitted), with the following omissions therefrom:

From Exhibit 1-A omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIV and XXVI to XXIX, inclusive;

From Exhibit 2-A omit Articles III to IX, inclusive, XI, the second paragraph of XIII

* Wherever reference herein is made to the filing of papers or documents, such filing is in the United States District Court for the Eastern District of Pennsylvania.

headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIV and XXVI to XXIX, inclusive;

From Exhibit 3 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 4 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspectors Certificate", the first paragraph of XIV headed "Liens and Taxes", and Articles XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 5 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 6 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIV, XXIV-A and XXVI to XXVIII, inclusive;

From Exhibit 7 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIV, and XXVI to XXVIII, inclusive;

From Exhibit 8 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspector's Certificate", XIV, XVIII, XX, XXI, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 9 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIV, XXIV-A and XXVI to XXVIII, inclusive;

From Exhibit 10 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 11 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIV and XXVI to XXVIII inclusive;

From Exhibit 12 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 13 omit Articles II to XI, inclusive, the second paragraph of XIII, headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 14 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspectors Certificate", XIV, XVIII, XX, XXI, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 15 omit Articles III to V, inclusive, VII to XII, inclusive, XIV to XIX, inclusive, XXII, XXIII, XXV to XXXII, inclusive, XXXIV and XXXV;

From Exhibit 16 omit Articles III to IX, inclusive, XI, the second paragraph of XIII headed "Inspector's Certificate", XIV, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive; together with Exhibit "A" attached to said Exhibit 16;

From Exhibit 19 omit paragraph 3 of Article I, together with the heading "Progress Shipment and Storage", paragraphs 3, 4(a), 4(b), 4(c), 5(a) to 5(f), inclusive, 6(a), 6(b) and 7 of Article II and Articles III to XI, inclusive, together with the letter dated October 17, 1919, and the paragraph marked VII, found on pages 542 to 545, inclusive, of the Statement of Claim.

2. The following parts of the Affidavit of Defense, with set-off and counter-claim, filed January 10, 1927:

(a) Pages 1 to 70, inclusive, and so much of paragraph One Hundred and Ninety-second as appears on page 71 (thus including paragraphs First to One Hundred and Ninety-second, inclusive, containing the defenses to causes of action First to Sixteenth, inclusive);

(b) Paragraphs Two Hundred and Sixth to Two Hundred and Eleventh, inclusive, from pages 75 to 77 (thus including the defenses to causes of action Nineteenth and Twentieth);

(c) Paragraphs First on page 86 to and including paragraph Sixtieth on page 138, constituting defendants Set-off and Counterclaim.

(d) Exhibits A, C and D.

3. Plaintiff's reply to the defendants' set-off and counterclaim, filed April 4, 1927.

4. Appearance of Charles Sinkler and Ralph B. Evans as attorneys for Plaintiff, filed February 18, 1926.

5. Agreement and order of reference, appointing Owen J. Roberts, Esq., Referee, filed May 1, 1928.

6. Report of Owen J. Roberts, Esq., disqualifying himself from acting as Referee, filed July 24, 1930.

7. Agreement appointing William Clarke Mason, Esq., Referee, filed March 23, 1931.

8. Acceptance and oath of William Clarke Mason, as Referee, filed March 28, 1931.

9. Report of the Special Master and Referee, dated and filed February 7, 1936, including Exhibits A and B thereto and the Appendix thereto containing requests of the parties for findings and rulings thereon and exceptions of the parties filed with the Special Master and Referee.

10. Exceptions of the United States of America and United States Shipping Board Emergency Fleet Corporation to the report of the Special Master and Referee, filed February 25, 1936.

11. Opinion of Oliver B. Dickinson, Judge of the United States District Court for the Eastern District of Pennsylvania, upon exceptions filed by plaintiff and defendant to the report of the Special Master and Referee, filed June 3, 1938.

12. Opinion of Judge Dickinson upon ruling to amend caption of the case, filed June 27, 1938.

13. Order changing caption of the case, filed June 27, 1938.

14. Appearance of Evans, Bayard and Frick as attorneys for the Plaintiff, filed June 28, 1938.

15. Appearance of Richardson Dilworth as attorney for the Plaintiff, filed August 22, 1938.

16. Opinion of Judge Dickinson upon Praecipe for judgment, disallowing interest to plaintiff on the judgment, filed September 23, 1938.

17. Opinion of Judge Dickinson upon Motion for Decree, assessing costs and the compensation of the Special Master and Referee against the defendant, filed December 23, 1938.

18. Exceptions of the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., to the rulings and decisions of the District Court, filed December 27, 1938.

19. Judgment filed December 23, 1938.

20. Transcript of docket entries under dates of December 23, and December 27, 1938, and February 3 and February 14, 1939, and all subsequent entries.

21. Defendant's Notice of Appeal from the judgment, filed March 10, 1939.

22. Plaintiff's Notice of Appeal from the judgment, filed March 22, 1939.

23. Plaintiff's Statement of the Points on Which It Intends to Rely.

24. Defendant's Statement of the Points on Which It Intends to Rely.

25. Stipulation of the contents of the Record on Appeal.

26. Designation of Plaintiff-Appellant of the por-

tion of the record to be contained in the record on its appeal.

27. Evidence taken before William Clarke Mason, Esq., pages 1 to 1024, filed April 4, 1931 and pages 606 to 610, inclusive, of the evidence before Owen J. Roberts, Esq.

28. Exhibit A, introduced in evidence (p. 6) at the hearing before William Clarke Mason, Esq., (hereinafter called "Second Hearing"), being copy of stipulation of facts with the following omissions and changes:

From the Index omit all following "Contract No. 465 S. C.—(page 65)";

From pages 1 and 2 omit the titles of the actions at law Nos. 11976, 11974 and 11972;

From pages 65 to 72, inclusive, omit paragraphs 119 to 126, inclusive, and insert in lieu thereof following the heading "East Coast Contract No. 465 S. C. (Bethlehem Ship's Sixteenth Cause of Action)" as follows:

> See First Supplemental Stipulation of Facts, Exhibit B;

Beginning on page 72 with the heading "Contract for Plant Facilities at Sparrows Point" omit all to the end of paragraph 315 on page 136;

Omit Exhibits A to D, inclusive, attached to said Exhibit A.

After exhibit heading "Exhibit E" insert:

> Exhibit E is the same as Exhibit G109 shown elsewhere in this transcript.

and omit the entire text of Exhibit E.

After the exhibit heading "Exhibit F" insert:

> Exhibit F is the same as Exhibit B29 shown elsewhere in this transcript.

and omit the entire text of Exhibit F.

After the exhibit heading "Exhibit G" insert:

Exhibit G is the same as Exhibit G107 shown elsewhere in this transcript.

and omit the entire text of Exhibit G.

After the exhibit heading "Exhibit H" insert:

Exhibit H is the same as Exhibit B30 shown elsewhere in this transcript.

and omit the entire text of Exhibit H.

After the exhibit heading "Exhibit I" insert:

Exhibit I is the same as Exhibit G125 shown elsewhere in this transcript.

and omit the entire text of Exhibit I.

After the exhibit heading "Exhibit J" insert:

Exhibit J is the same as Exhibit G127 shown elsewhere in this transcript.

and omit the entire text of Exhibit J.

After the exhibit heading "Exhibit K" insert:

Exhibit K is the same as Exhibit B14 shown elsewhere in this transcript.

and omit the entire text of Exhibit K.

After the exhibit heading "Exhibit L" insert:

Exhibit L is the same as Exhibit G132 shown elsewhere in this transcript.

and omit the entire text of Exhibit L.

After the exhibit heading "Exhibit M" insert:

Exhibit M is the same as Exhibit G134 shown elsewhere in this transcript.

and omit the entire text of Exhibit M.

After the exhibit heading "Exhibit N" insert:

Exhibit N is the same as Exhibit G135 shown elsewhere in this transcript.

and omit the entire text of Exhibit N.

29. Exhibit B, admitted in evidence at the Second Hearing (p. 6), being copy of supplemental stipulation of facts.

30. Exhibit D, admitted in evidence at the Second Hearing (p. 6), being copy of stipulation of counsel.

31. Exhibit G-4, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to Ralph B. Evans from Joseph J. Brown, dated May 1, 1928.

32. Exhibit G-5, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to W. W. Robison from A. G. Smith, dated June 22, 1928.

33. Exhibit G-6, admitted in evidence at the Second Hearing (p. 186), being a statement purporting to show general characteristics, dates of keel laying, etc., with respect to various ships delivered during the calendar year 1917.

34. Exhibit G-7, admitted in evidence at the Second Hearing (p. 903), being copy of a memorandum to W. A. Shick from H. A. Brecht dated May 29, 1928.

35. Exhibit G-8, admitted in evidence at the Second Hearing (p. 903), being copy of a memorandum to H. A. Brecht from H. H. Shulze, dated May 25, 1928.

36. Exhibit G-9, admitted in evidence at the Second Hearing (p. 903), being schedule showing detail of plates and shapes purchased for hulls 251, 253, 254, 255, dated May 26, 1928.

37. Exhibit G-10, admitted in evidence at the Second Hearing (p. 903), being schedule showing average plant labor rates and direct labor charges for hulls 244-5, 251, 253, 254, 255, dated May 28, 1928.

38. Exhibit G-11, admitted in evidence at the Sec-

ond Hearing (p. 903), being copy of a memorandum to F. A. Shick from E. W. Smith, dated June 9, 1926.

39. Exhibit G-12, admitted in evidence at the Second Hearing (p. 903), being copy of a tabulation showing direct labor cost by months for certain hulls.

40. Exhibit G-13, admitted in evidence at the Second Hearing (p. 903), being copy of a memorandum to F. A. Shick from J. Sidney Lewis, dated June 1, 1928.

41. Exhibit G-14, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to H. Speed from Union Iron Works Co., dated November 9, 1916.

42. Exhibit G-15, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to M. P. Geirrine from Richard B. Carr, dated March 23, 1916.

43. Exhibit G-16, admitted in evidence at the Second Hearing (p. 903), being copy of a tabulation showing direct labor cost by months and plant earning rates for each month on certain hulls.

44. Exhibit G-17, admitted in evidence at the Second Hearing (p. 903), being copy of a telegram to E. W. Geiss from J. Sidney Lewis, dated June 6.

45. Exhibit G-18, admitted in evidence at the Second Hearing (p. 903), being copy of tabulation showing comparison of weights of plates and shapes and average price of same.

46. Exhibit G-19, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to

W. W. Robison from H. G. Smith, dated October 25, 1928.

47. Exhibit G-20, admitted in evidence at the Second Hearing (p. 903), being copy of tabulation showing comparative cost of job 12 materials for hulls 244-5 and hulls 253-4 and 268-9.

48. Exhibit G-21, admitted in evidence at the Second Hearing (p. 142), being copy of a letter to Ralph B. Evans from Joseph J. Brown dated July 6, 1928.

49. Exhibit G-22, admitted in evidence at the Second Hearing (p. 143), being copy of a letter to Mr. Frick from W. W. Robison dated August 8, 1928.

50. Exhibit G-23, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to W. W. Robison from H. G. Smith dated August 8, 1928.

51. Exhibit G-24, admitted in evidence at the Second Hearing (p. 903), being copy of schedule of structural items as charged on hulls 244-45 and 253-54, and merged into job 12, hulls 268-69 and 1376-81.

52. Exhibit G-25, admitted in evidence at the Second Hearing (p. 903), being copy of tabulation showing comparative cost of job 12 materials on hulls 244-5, 253-4, 268-9 and 1376-81, dated August 2, 1928.

53. Exhibit G-26, admitted in evidence at the Second Hearing (p. 186), being copy of a statement relating to costs with respect to hulls 4158 and 4159, dated July 16, 1928.

54. Exhibit G-27, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to W. W. Robison from plaintiff, dated June 30, 1928.

55. Exhibit G-28, admitted in evidence at the Second Hearing (p. 903), being copy of memorandum to F. A. Shick from G. H. Bankhard, dated June 14, 1928.

56. Exhibit G-29, admitted in evidence at the Second Hearing (p. 903), being copy of a computation showing direct labor and average plant hourly rate at the Harlan plant of plaintiff, dated May 21, 1928.

57. Exhibit G-30, admitted in evidence at the Second Hearing (p. 903), being copy of computation showing total weight and cost per pound on hull steel according to plate and shape schedule at the Harlan plant, dated May 31, 1928.

58. Exhibit G-31, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to W. W. Robison from E. W. Geiss, dated June 19, 1928.

59. Exhibit G-32, admitted in evidence at the Second Hearing (p. 117), being copy of letter to Henry P. Brown from Chauncey G. Parker, dated January 17, 1927, together with enclosure referred to therein.

60. Exhibit G-33, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to Henry P. Brown from Ralph P. Evans, dated March 22, 1927.

61. Exhibit G-34, admitted in evidence at the Second Hearing (p. 903), being copy of chart prepared by Harry Brown.

62. Exhibit G-39, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to W. W. Robison from H. G. Smith, dated June 22, 1928.

63. Exhibit G-40, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to J. L. Ackerson from plaintiff, dated August 25, 1919.

64. Exhibit G-41, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to A. F. Pillsbury from John A. McGregor, dated September 29, 1917.

65. Exhibit G-42, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to Rear Admiral W. L. Capps from J. W. Powell, dated August 30, 1917.

66. Exhibit G-45, admitted in evidence at the Second Hearing (p. 817), being computations prepared by Joseph A. Honsick.

67. Exhibit G-96, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to W. L. Capps from John A. McGregor, dated October 26, 1917.

68. Exhibit G-97, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to Union Iron Works from F. T. Bowles, dated October 30, 1917.

69. Exhibit G-101, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to A. F. Pillsbury from John A. McGregor, dated November 30, 1917.

70. Exhibit G-104, admitted in evidence at the Second Hearing (p. 75), being copy of letter to de-

fendant from J. W. Powell, dated December 13, 1917.

71. Exhibit G-105, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to defendant from J. W. Powell, dated December 14, 1917.

72. Exhibit G-107, admitted in evidence at the Second Hearing (p. 198), being copy of a letter to defendant from J. W. Powell, dated December 14, 1917.

73. Exhibit G-109, admitted in evidence at the Second Hearing (p. 85), being copy of a letter to defendant from J. W. Powell, dated December 19, 1917.

74. Exhibit G-110, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to plaintiff from F. T. Bowles, dated December 19, 1917.

75. Exhibit G-112, admitted in evidence at the Second Hearing (p. 206), being copy of a letter to Charles Piez from J. W. Powell, dated December 20, 1917.

76. Exhibit G-116, admitted in evidence at the Second Hearing (p. 755), being copy of a letter to Charles Piez from J. W. Powell, dated January 3, 1918.

77. Exhibit G-122, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to defendant from H. Brown, dated January 17, 1918.

78. Exhibit G-124, admitted in evidence at the Second Hearing (p. 903), being copy of letter to

defendant from J. W. Powell, dated February 12, 1918.

79. Exhibit G-125, admi ed in evidence at the Second Hearing (p. 903), being copy of a letter to defendant from J. W. Powell, dated February 25, 1918.

80. Exhibit G-126, admitted in evidence at the Second Hearing (p. 687), being copy of a letter to defendant from J. W. Powell, dated March 7, 1918.

81 Exhibit G-127, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to Bethlehem Steel Corporation from Charles Piez, dated March 18, 1918.

82. Exhibit G-128, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to plaintiff from Charles Piez, dated April 8, 1918.

83. Exhibit G-130, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to defendant from J. W. Powell, dated April 16, 1918.

84. Exhibit G-131, admitted in evidence at the Second Hearing (p. 903), being copy of a telegram to Charles A. Piez from plaintiff, dated April 18, 1918.

85. Exhibit G-132, admitted in evidence at the Second Hearing (p. 218), being copy of a letter to defendant from H. Brown, dated April 18, 1918.

86. Exhibit G-133, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to plaintiff from Charles Piez, dated April 23, 1918.

87. Exhibit G-134, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to plaintiff from Charles Piez, dated April 30, 1918.

88. Exhibit G-135, admitted in evidence at the Second Hearing (p. 903), being copy of a letter to plaintiff from H. Coonley, dated May 15, 1918.

89. Exhibit G-150, admitted in evidence at the Second Hearing (p. 903), being copy of extract from proceedings of defendant on June 9, 1920.

90. Exhibit G-154, admitted in evidence at the Second Hearing (p. 55), being copy of document described as "Description of Graph".

91. Exhibit G-155, admitted in evidence at the Second Hearing being copy of explanation of chart prepared by Harry Brown.

92. Exhibit G-159, admitted in evidence at the Second Hearing (p. 904), being copy of a letter to W. W. Robison from H. G. Smith, dated October 25, 1928.

93. Exhibit G-160, admitted in evidence at the Second Hearing, being copy of memorandum to Edward N. Hurley from Charles Schwab, dated October 2, 1918.

94. Exhibit G-161, admitted in evidence at the Second Hearing (p. 904), being copy of a letter to the defendant from the Purchasing Agent of Plaintiff, dated February 7, 1918.

95. Exhibit G-163, admitted in evidence at the Second Hearing being statements of administrative and general expenses and property taxes for Union Iron Works Company, December 1, 1915 to December 31, 1917.

96. Exhibit G-170, admitted in evidence at the Second Hearing (p. 904), being copy of a letter to Mr. Brown from Mr. Evans, dated May 22, 1929.

98. Exhibit G-175, admitted in evidence at the Second Hearing (p. 904), being copy of a letter to Ralph B. Evans from Joseph J. Brown, dated September 7, 1928.

99. Exhibit G-176, admitted in evidence at the Second Hearing (p. 137), being copy of a letter to Ralph B. Evans from Ralph H. Hallett, dated September 21, 1928.

100. Exhibit G-177, admitted in evidence at the Second Hearing (p. 137), being copy of a letter to Mr. Evans from W. W. Robison, dated September 25, 1928.

101. Exhibit G-178, admitted in evidence at the Second Hearing (p. 904), being copy of a letter to defendant from plaintiff, dated April 19, 1918.

102. Exhibit G-207, admitted in evidence at the Second Hearing (p. 504), being copy of a letter to Ralph B. Evans from W. W. Robison, dated June 30, 1928.

103. Exhibit G-208, admitted in evidence at the Second Hearing (p. 904), being copy of a letter to plaintiff from Chester W. Cuthell, dated September 25, 1918.

104. Exhibit G-209, admitted in evidence at the Second Hearing (p. 904), being copy of a letter to Chester W. Cuthell from J. W. Powell, dated September 26, 1918.

105. Exhibit B-6, admitted in evidence at the Second Hearing (p. 860), being a memorandum to the Board of Trustees of defendant from Charles Piez, dated October 9, 1918.

106. Exhibit B-7, admitted in evidence at the Second Hearing (p. 868), being copy of extract from the minutes of the Board of Trustees of defendant on April 30, 1918.

107. Exhibit B-10, admitted in evidence at the Second Hearing, being copy of statement showing summary of industrial group statistics for the years 1926 and 1927.

108. Exhibit B-11, admitted in evidence at the Second Hearing (p. 941), being copy of a statement showing manufacturing profit of United States Steel Corporation during the years 1916 to 1918, inclusive.

109. Exhibit B-14, admitted in evidence at the Second Hearing (p. 977), being copy of a telegram to plaintiff from Underwood, dated March 19, 1918.

110. Exhibit B-17, admitted in evidence at the Second Hearing (p. 977), being copy of a letter to plaintiff from Morris Down Farris, dated June 27, 1918.

111. Exhibit B-18, admitted in evidence at the Second Hearing (p. 977), being copy of a letter to Charles Piez from J. W. Powell, dated July 29, 1918.

112. Exhibit B-19, admitted in evidence at the Second Hearing (p. 977), being copy of a letter to J. W. Powell from Charles Piez, dated August 1, 1918.

113. Exhibit B-20, admitted in evidence at the Second Hearing (p. 977), being copy of a letter to defendant from H. Brown, dated August 12, 1918.

114. Exhibit B-23, admitted in evidence at the Second Hearing (p. 977), being copy of a letter to

plaintiff from Chester W. Cuthell, dated December 21, 1918.

115. Exhibit B-24, admitted in evidence at the Second Hearing (p. 977), being copy of a letter to defendant from J. W. Powell, dated December 28, 1918.

116. Exhibit B-25, admitted in evidence at the Second Hearing (p. 977), being copy of a letter to J. W. Powell from Charles Piez, dated February 1, 1919.

117. Exhibit B-28, admitted in evidence at the Second Hearing (p. 705), being copy of a memorandum to the Vice President of defendant from F. T. Bowles and G. S. Radford, dated January 5, 1918.

118. Exhibit B-29, admitted in evidence at the Second Hearing (p. 708), being copy of a letter to plaintiff from Charles Piez, dated January 5, 1918.

119. Exhibit B-30, admitted in evidence at the Second Hearing (p. 708), being copy of a letter to plaintiff from Charles Piez, dated January 5, 1918.

120. Exhibit B-31, admitted in evidence at the Second Hearing (p. 708), being copy of a letter to plaintiff from Charles Piez, dated January 5, 1918.

121. Exhibit B-33, admitted in evidence at the Second Hearing (p. 894), being summary of hours for 9100 ton vessels built at Fore River plant of plaintiff.

122. Order of the District Court filed April 24, 1939, pursuant to Rule 75 (i) of the Federal Rules of Civil Procedure that the papers and exhibits mentioned therein admitted in evidence at the Sec-

ond Hearing be sent to the Appellate Court in lieu of copies.

B. *The following papers and documents with respect to the above entitled cause No. 3315:*

1. Bill of Complaint, filed April 17, 1925.

2. Answer of Bethlehem Steel Corporation, filed July 25, 1925.

3. Answer of Bethlehem Shipbuilding Corporation, Ltd. filed July 24, 1925, and Exhibits 1, 10 and 18 annexed thereto (all other Exhibits to be omitted).

4. Answer of Bethlehem Steel Company, with Exhibit 1 excluded, filed July 25, 1925.

5. Answer of Fore River Shipbuilding Corporation, with Exhibit 1 excluded, filed July 25, 1925.

6. Answer of Union Iron Works Company, with Exhibit 1 excluded, filed July 25, 1925.

7. Plaintiff's reply to answer of Bethlehem Shipbuilding Corporation, Ltd., with Exhibit B excluded, filed April 15, 1929.

8. Plaintiff's reply to answer of Bethlehem Steel Company, with Exhibit A excluded, filed April 15, 1929.

9. Plaintiff's reply to answer of Fore River Shipbuilding Corporation, with Exhibit A excluded, filed April 15, 1929.

10. Plaintiff's reply to answer of Union Iron Works Company, with Exhibit A excluded, filed April 15, 1929.

11. Agreement and Order of Reference, appointing Owen J. Roberts, Esq., Special Master, filed May 1, 1928.

12. Order of the District Court, appointing William Clarke Mason, Esq., Special Master, to succeed Owen J. Roberts, Esq., filed March 23, 1931.

13. Final decree of the court dismissing plaintiff's bill in Equity filed December 12, 1938.

14. Plaintiff's Notice of Appeal, filed March 10, 1939.

15. Plaintiff's statement of the points on which it intends to rely.

16. Transcript of docket entry under date of December 12, 1938, being final decree dismissing Bill of Complaint and Counterclaim and all subsequent entries.

17. The papers and documents indicated above as part of the record in Cause No. 11970, under the items numbered 6, 9, 10, 11, 16, 17, 25, 27, 28 to 122, inclusive, (which are designated as a part of and incorporated by reference in the record in Cause No. 3315,) but which, however, are not to be reprinted in the record in Cause No. 3315.

The plaintiff in the above entitled Cause No. 11970 having taken a cross-appeal from the judgment therein, and having filed its designation of the portions of the record, proceedings and evidence to be contained in the record on its said appeal, it is further stipulated that this stipulation may serve in lieu of any cross-designation by defendant of additional portions of the record, proceedings and evi-

dence to be included in the record on said appeal of the plaintiff in said cause.

Dated April 24, 1939.

J. CULLEN GANEY,
United States Attorney for the Eastern District of Pennsylvania,
Attorney for the United States Shipping Board Merchant Fleet Corporation, defendant in Cause No. 11970, and the United States of America, plaintiff in Cause No. 3315.

Office and Post Office Address: Second and Chestnut Streets,
Philadelphia, Pennsylvania.

BON GEASLIN,
General Counsel, United States Maritime Commission, Attorney for the United States Shipping Board Merchant Fleet Corporation, defendant in Cause No. 11970, and the United States of America, plaintiff in Cause No. 3315.

Office and Post Office Address:
Commerce Building,
Washington, D. C.

RICHARDSON DILWORTH,
EVANS, BAYARD & FRICK,

By RODNEY T. BONSELL,
Attorneys for Bethlehem Shipbuilding Corporation, Ltd., plaintiff in Cause No. 11970, and Bethlehem Steel Corporation, et al., defendants in the Cause No. 3315.

Office and Post Office Address:
15 Broad Street,
New York, New York.

DESIGNATION OF APPELLANT BETHLEHEM SHIPBUILDING CORPORATION, LTD., OF THE PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE CONTAINED IN THE RECORD ON ITS APPEAL FROM THE JUDGMENT IN THE ABOVE-ENTITLED ACTION

(Filed April 15, 1939)

The appellant Bethlehem Shipbuilding Corporation, Ltd. designates the portions of the record, proceedings and evidence to be contained in the record on its appeal from the judgment in the above-entitled action, as follows:

I. The Summons in Assumpsit dated January 28, 1926.

II. The following parts of the Statement of Claim in Assumpsit, viz.:

1. The front cover, showing the title of the action and notice to the defendant to file an affidavit of defense (the Index, pages i to iv, inclusive, is to be omitted).

2. Pages 1 to 88, inclusive, and paragraph One Hundred Ninety-second on page 89, (thus including causes of action First to Sixteenth, inclusive); paragraphs Two Hundred Sixth to Two Hundred Eleventh, inclusive, on pages 94 to 96, (thus including causes of action Nineteenth and Twentieth), together with the heading of each of the last mentioned causes of action; and paragraph Two Hundred and Ninety-

seventh, together with the names of the attorney and counsel for the plaintiff and the verification.

3. The following exhibits attached to the Statement of Claim, each abridged as shown in Plaintiff's Statement for Abridgement of Exhibits Attached to the Statement of Claim, filed herewith, viz.:

Exhibits 1-A, 2-A, 3 to 16, inclusive, and 19, (all other exhibits attached to the Statement of Claim are to be omitted).

III. The following parts of the Affidavit of Defense with Set-off and Counterclaim, viz.:

(a) Pages 1 to 70, inclusive, and so much of paragraph One Hundred and Ninety-second as appears on page 71 (thus including paragraphs First to One Hundred and Ninety-second, inclusive, containing the defenses to causes of action First to Sixteenth, inclusive); (b) paragraphs Two Hundred and Sixth to Two Hundred and Eleventh, inclusive, from pages 75 to 77 (thus including the defenses to causes of action Nineteenth and Twentieth); (c) paragraphs First to Sixtieth, constituting the allegations of the Set-off and Counterclaim referred to in the foregoing paragraphs of the Affidavit of Defense, omitting, however, paragraphs Forty-second to Forty-ninth, inclusive, thereof and paragraphs Fifty-fifth to Fifty-seventh, inclusive, thereof; and (d) Exhibits A, C and D attached thereto.

IV. Plaintiff's Reply to defendant's Set-off and Counterclaim.

V. Appearance of Charles Sinkler and Ralph B. Evans as attorneys for the plaintiff filed February 18, 1926.

VI. The stipulation and order of reference to Owen J. Roberts filed May 1, 1928.

VII. The stipulation substituting Wm. Clarke Mason as Referee filed March 23, 1931.

VIII. The acceptance and oath of the Referee filed March 28, 1931.

IX. The Report of Special Master and Referee filed on February 7, 1936, including Exhibit A and Exhibit B thereto and the Appendix thereto constituting pages 1a to 134a, inclusive, thereof.

X. The exceptions of the defendant to the Report of the Special Master and Referee filed February 25, 1936.

XI. The opinion of Dickinson, J., dated June 2, 1938, sur Exceptions to Report of Special Master, &c.

XII. The order dated and filed on June 27, 1938, amending the title of this action.

XIII. Appearance of Evans, Bayard & Frick as attorneys for the plaintiff, filed June 28, 1938.

XIV. Appearance of Richardson Dilworth, as attorney for the plaintiff, filed August 22, 1938.

XV. The opinion of Dickinson, J., sur Praecipe for Judgment filed September 23, 1938.

XVI. The exceptions of the plaintiff to the rulings and decision of the Court, filed Dec. 27, 1938, and order allowing such exceptions.

XVII. The judgment filed Dec. 23, 1938.

XVIII. Transcript of Docket entries under date of December 23, December 27 and December 28, 1938, and February 3 and 14, 1939, and all subsequent entries.

XIX. Plaintiff's Notice of Appeal, filed March 22, 1939, with the date of filing.

XX. The designations of the parties as to matters to be included in the record on the plaintiff's appeal.

XXI. The statement of the Plaintiff-Appellant of the points on which it extends to rely on its appeal.

XXII. Excerpts from the transcript of the trial before William Clarke Mason, Esq., as Referee, and exhibits therein referred to, as follows:

(From pages 1 and 2 of the transcript)

No. 11970 December Sessions, 1925

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

v.

THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION;

At Law

Hearing before WILLIAM CLARKE MASON, ESQ., Special Master and Referee, held in Room 313, Federal Building, Ninth and Market Streets, Philadelphia, Monday, March 30, 1931, at 10 o'clock A. M.

Present:

William Clarke Mason, Esq., sitting as Special Master in No. 3315, March Sessions, 1925, in Equity; and as Referee, by agreement, in Nos. 11970, 11972, 11974 and 11976, December Sessions, 1925, at Law.

Chauncey G. Parker, Esq., Ralph H. Hallett, Esq., and Joseph J. Brown, Esq., for United States of America and for United States Shipping Board Emergency Fleet Corporation.

Ralph B. Evans, Esq., Frederick H. Wood, Esq., and W. W. Robison, Esq., for Bethlehem Steel Corporation, Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Steel Company, Fore River Shipbuilding Corporation and Union Iron Works Co.

(From page 5, last line, to page 6, line 3)

MR. BROWN: Counsel for both parties offer the stipulation of facts which was marked as Exhibit A in the previous proceeding.

THE MASTER: That is admitted, as there is no objection.

Exhibit A, being the printed Stipulation of Facts abridged as shown in plaintiff's Statement for Abridgment of Exhibits.

(From page 6, lines 6 to 9, inclusive)

Counsel for both parties offer a first supplemental stipulation of facts marked as Exhibit B in the previous proceeding.

THE MASTER: That is accepted and entered in evidence, and will be similarly treated.

Exhibit B, being the printed First Supplemental Stipulation of Facts.

(From page 6, lines 10 to 16, inclusive)

MR. BROWN: Counsel for both parties offer in evidence all of the contracts in controversy, which appear as exhibits to the answer of the Bethlehem Steel Corporation, et al., in the equity case, No. 3315. The contracts in question are referred to in the said answer as Exhibits 5 to 73 inclusive, and were offered in the previous proceedings as Exhibit C.

THE MASTER: They are admitted.

(A statement as follows concerning the contracts in controversy:)

The contracts in controversy, abridged by omission of parts irrelevant to the appeals herein, are Exhibits 1-A, 2-A, 3 to 16, inclusive, and 19 annexed to the Statement of Claim as included in this transcript of the record.

(From page 6, line 17, to page 7, line 11)

MR. BROWN: Counsel for both parties offer a memorandum of an agreement of counsel for incorporation in the record, which agreement was marked as Exhibit D in the previous proceeding.

THE MASTER: It is admitted.

MR. BROWN: It is further agreed by counsel for all parties that the reference in paragraph 3 of the stipulation which has been offered as Exhibit D is to the tankers built under Contract No. 178, and that the disputed item is the item of $199,049.07, which appears at page 15, para-

graph 20, of the printed stipulation of facts, Exhibit A.

It is further agreed that the items set up by way of set-off and counter claim in the affidavit of defense of the Fleet Corporation in Action No. 11970, listed in Exhibit D under the heading Miscellaneous Accounts Receivable, $55,128.34, are to be adjusted by Bethlehem giving credit to the Fleet Corporation for one half of this amount and the Fleet Corporation waiving any claim to the balance.

There has been no agreement reached as to whether or not this item shall carry interest.

Exhibit D, as follows:

Bethlehem v. Fleet Corporation

MEMORANDUM OF AGREEMENT OF COUNSEL

1. Bethlehem waives all claims on requisitioned ships and the Fleet Corporation and the Government waive all claims for overpayments on requisitioned ships.

2. Bethlehem waives any claim for unpaid balance of the appropriations for plant improvements and facilities, and the Fleet Corporation and the Government waive any claim to the plant improvements and facilities, including the office building at Bethlehem, and if necessary agree to give bills of sale and deeds of conveyance vesting absolute title in Bethlehem.

3. Fleet Corporation and the Government concede one-half of Bethlehem's claim for replacing alleged defective work on the Cabrille

and two other tankers, and Bethlehem agrees to accept one-half of its claim in full on that account.

4. Fleet Corporation and the Government concede one-half of Bethlehem's claim for expenses incurred after September 7, 1920, in connection with cancelled ships under contract No. 465, and Bethlehem agrees to accept one-half of its claim in full on this account.

5. Fleet Corporation and the Government concede the amount of Bethlehem's claim on the contract for the Curtis marine propelling equipment, and waives any claim for over-payment or off-set on that contract.

6. Bethlehem concedes that the unclaimed straight wages and unclaimed retroactive wages, including increased wages included in unclaimed straight wages, if any, are not to be charged as cost on account of contract ships.

7. The items scheduled in Exhibit "F" of the Government's Bill in Equity are settled as follows:

Material sold to shipbuilder; Bethlehem concedes $6,400; Fleet Corporation and the Government waive the balance of the claim on this item.

Unbilled material: This has been adjusted in the stipulation by increasing the cost of contract ships by that amount and increasing the credit to the Fleet Corporation or the Government for the payments on account in a like amount.

Carfare at Sparrows Point and *Idle Plant at Sparrows Point:* Bethlehem concedes these items.

Cost of Perley Morse audit: Fleet Corporation and the Government waive any claims on this item.

8. Bethlehem waives any claim for damages due to delay in completing the audit and the Fleet Corporation and the Government waive any claim for additional expenses in connection with making the audit on account of Bethlehem's alleged failure to keep proper records.

9. Bethlehem concedes interest at the rate allowed by the bank on its deposits with respect to the $8,000,000 advanced by the Fleet Corporation or the Government, the amount of the interest on this item being $132,770.91.

10. The Fleet Corporation and the Government concede that royalties paid on Curtis turbines and Massachusetts Soldiers' Bonus Tax are proper items to be charged as cost on contract ships.

(From page 1017 to page 1020, line 11)

Meeting held at the office of the Special Master and Referee, William Clarke Mason, Esq., 2107 Fidelity-Philadelphia Building, 123 South Broad Street, Philadelphia, on Monday, May 11, 1931, at 3:30 p. m. D. S. T.

Present:

William Clarke Mason, Esq., Special Master and Referee.

Joseph J. Brown, Esq., for the Government and for United States Shipping Board Emergency Fleet Corporation.

Ralph B. Evans, Esq., for Bethlehem Companies.

It is stipulated between counsel for Bethlehem and counsel for Emergency Fleet Corporation and the Government that with respect to all of the contracts involved, a complete audit of the total cost of the vessels included in the respective contracts and of the revised estimated cost thereof, was made by the Emergency Fleet Corporation and the said audit was completed on or about the 1st day of September, 1922.

MR. EVANS: I offer in evidence Paragraph 207 of the statement of claim in the case of Bethlehem Shipbuilding Corporation, Ltd., against the United States Shipping Board Emergency Fleet Corporation (No. 11970), reading as follows:

"TWO HUNDRED SEVENTH: The plaintiff completed said six equipments and said six sets of spares in accordance with the terms and provisions of said contract and said plans and specifications and delivered the same complete to the defendant f. o. b. cars, as provided in Section 2 of Article I of said contract, on or before the first day of February, 1921. The plaintiff duly performed all the terms and conditions of said contract on its part to be performed and the defendant took possession of and accepted said equipments and said spares as constructed in accordance with said plans and specifications and the terms and conditions of said contract."

In connection with that offer I offer the corresponding paragraph of the affidavit of defense, but only for the purpose of showing that the averments of the statement of claim are not denied:

"TWO HUNDRED AND SEVENTH. In answer to Paragraph Two Hundred and Seventh of the Statement of Claim, defendant avers that it took possession of and accepted said equipments and spares upon behalf of its said principal."

I also offer Paragraph 210 of the statement of claim in the same case, as follows:

"TWO HUNDRED TENTH: After the termination of said agreement of lease, in the latter part of the year 1919, the defendant, in accordance with the terms thereof, removed said barracks and on or about the 29th day of March, 1920, entered into an agreement with the plaintiff whereby the plaintiff agreed to provide for the restoration of said land and the defendant agreed to reimburse the plaintiff for the cost thereof. In accordance with said agreement, and at the direction and with the approval of the defendant, the plaintiff procured the restoration of said land to its original condition at a total cost to the plaintiff of two thousand five hundred and seventy dollars ($2,570)."

Paragraph 210 is admitted without qualification in the affidavit of defense.

I offer also Paragraph 211 of the statement of claim in the same case, as follows:

"TWO HUNDRED ELEVENTH: Upon the restoration of said land to its original condition as aforesaid, there became due from the defendant to the plaintiff the sum of two thousand five hundred and seventy dollars ($2,570), no part of which has been paid, although duly demanded, which sum is now due and owing to the plaintiff from the defendant, with interest thereon from the first day of June, 1920."

I offer Paragraph 211 of the affidavit of defense, but only for the purpose of showing that the averments of the corresponding paragraph of the statement of claim are not denied:

"TWO HUNDRED AND ELEVENTH: In answer to Paragraph Two Hundred and Eleventh of the Statement of Claim, defendant admits that plaintiff is entitled to a credit in the said amount of $2,570.00 against the balance owing by it to defendant upon the causes of action hereinafter set forth in defendant's Set-off and Counterclaim. Defendant avers that the agreements referred to in plaintiff's Twentieth Cause of Action were made by defendant upon behalf of its principal, the United States of America."

THE MASTER: There being no objection, the offers are all admitted.

(From page 1023, last line, to page 1024 line 7, inclusive)

It is stipulated between counsel for Bethlehem and counsel for the Emergency Fleet Corporation that Bethlehem Shipbuilding Corporation, Ltd., is a corporation organized and existing

under the laws of the State of Delaware, and that the United States Shipping Board Emergency Fleet Corporation is a corporation organized pursuant to Section 11 of the Act of Congress approved September 7, 1916, known as the Shipping Act 1916; that it is a corporation existing under and by virtue of the laws of the District of Columbia.

Dated, April 15, 1939.

RICHARDSON DILWORTH
Attorneys for Plaintiff-Appellant Bethlehem Shipbuilding Corporation, Ltd.

PLAINTIFF'S STATEMENT FOR ABRIDGEMENT (1) FROM EXHIBITS ATTACHED TO THE STATEMENT OF CLAIM, (2) FROM OTHER EXHIBITS

Pursuant to Rule 75 (e) of the Federal Rules of Civil Procedure, the plaintiff indicates the following as the matter to be omitted from those Exhibits which the plaintiff has designated to be included in the record on its appeal from the judgment in the above-entitled action:

(1) *Matter to Be Omitted from Exhibits Attached to the Statement of Claim:*

From Exhibit 1-A omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXIX, inclusive;

From Exhibit 2-A omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXIX, inclusive;

From Exhibit 3 omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive.

From Exhibit 4 omit Articles III to XIII, inclusive, the first paragraph of Article XIV headed "Liens and Taxes", and Articles XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 5 omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 6 omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV, XXIV-A and XXVI to XXVIII; inclusive;

From Exhibit 7 omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 8 omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 9 omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV, XXIV-A and XXVI to XXVIII, inclusive;

From Exhibit 10 omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 11 omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 12 omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 13 omit Articles II to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 14 omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive;

From Exhibit 15 omit Articles III to XIX, inclusive, XXII, XXIII, XXV to XXXII, inclusive, XXXIV and XXXV;

From Exhibit 16 omit Articles III to IX, inclusive, XI to XIV, inclusive, XVII, XVIII, XX, XXI, XXIII, XXIV and XXVI to XXVIII, inclusive; together with Exhibit "A" attached to said Exhibit 16;

From Exhibit 19 omit paragraph 3 of Article I, together with the heading "Progress Shipment and Storage", paragraphs 3, 4(a), 4(b), 4(c), 5(a) to 5(f), inclusive, 6(a), 6(b) and 7 of Article II and Articles III to XI, inclusive, together with the letter dated October 17, 1919, and the paragraph marked VII, found on pages 542 to 545, inclusive, of the Statement of Claim.

(2) *Matter to Be Omitted from Other Exhibits Designated by the Plaintiff to Be Included in the Record of Its Appeal:*

From Exhibit A omit the following:

From the Index all following "Contract No. 465 S. C.—(page) 65";

From pages 1 and 2 omit the titles of the actions at law Nos. 11976, 11974 and 11972;

From pages 65 to 72, inclusive, omit paragraphs 119 to 126, inclusive, and insert in lieu thereof following the heading "East Coast Contract No. 465 S. C. (Bethlehem Ship's Sixteenth Cause of Action)" as follows:

> See First Supplemental Stipulation of Facts, Exhibit B;

Beginning on page 72 with the heading "Contract for Plant Facilities at Sparrows Point" omit in toto to the end of paragraph 315 on page 136;

Omit Exhibits A to D, inclusive, attached to said Exhibit A.

After the exhibit heading "Exhibit E" insert:

> Exhibit E is the same as Exhibit G109 shown elsewhere in this transcript.

and omit the entire text of Exhibit E.

After the exhibit heading "Exhibit F" insert:

> Exhibit F is the same as Exhibit B29 shown elsewhere in this transcript.

and omit the entire text of Exhibit F.

After the exhibit heading "Exhibit G" insert:

> Exhibit G is the same as Exhibit G107 shown elsewhere in this transcript.

and omit the entire text of Exhibit G.

After the exhibit heading "Exhibit H" insert:

> Exhibit H is the same as Exhibit B30 shown elsewhere in this transcript.

and omit the entire text of Exhibit H.

After the exhibit heading "Exhibit I" insert:

Exhibit I is the same as Exhibit G125 shown elsewhere in this transcript.

and omit the entire text of Exhibit I.

After the exhibit heading "Exhibit J" insert:

Exhibit J is the same as Exhibit G127 shown elsewhere in this transcript.

and omit the entire text of Exhibit J.

After the exhibit heading "Exhibit K" insert:

Exhibit K is the same as Exhibit B14 shown elsewhere in this transcript.

and omit the entire text of Exhibit K.

After the exhibit heading "Exhibit L" insert:

Exhibit L is the same as Exhibit G132 shown elsewhere in this transcript.

and omit the entire text of Exhibit L.

After the exhibit heading "Exhibit M" insert:

Exhibit M is the same as Exhibit G134 shown elsewhere in this transcript.

and omit the entire text of Exhibit M.

After the exhibit heading "Exhibit N" insert:

Exhibit N is the same as Exhibit G135 shown elsewhere in this transcript.

and omit the entire text of Exhibit N.

RICHARDSON DILWORTH,
Attorney for Plaintiff-Appellant, Bethlehem Shipbuilding Corporation, Ltd.

(Continued on page 815, Volume II).